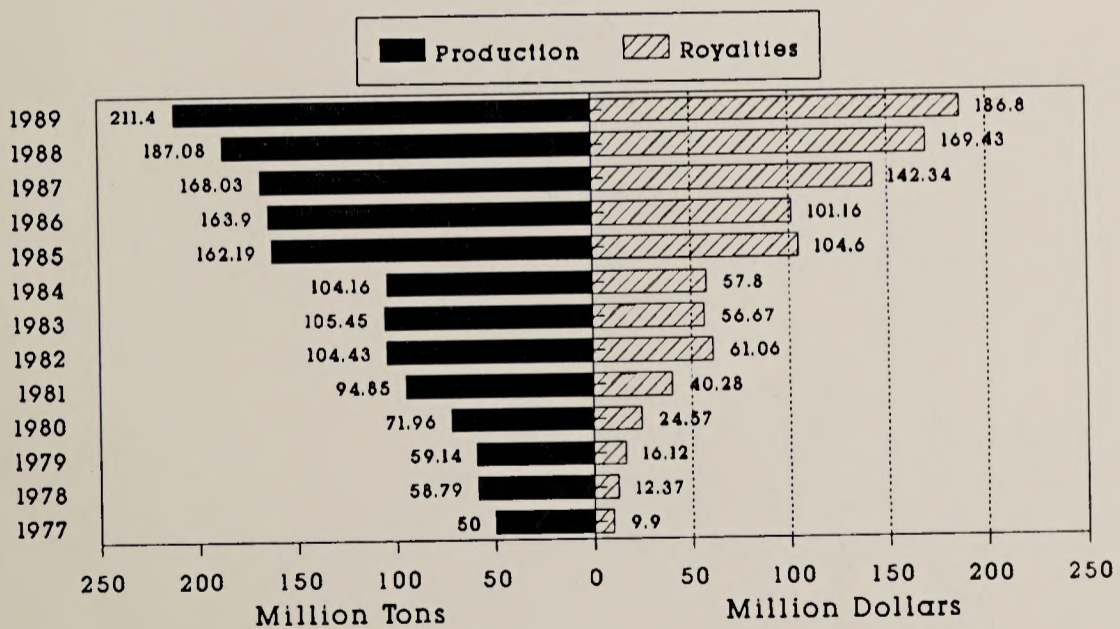




Federal Coal Management Report



Production and Royalties Reported from Federal Coal Leases FY 1977 through FY 1989



Source: MMS, Royalty Management Program

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Federal Coal Management Report

Fiscal Year 1989

Annual report of the Secretary of the Interior
under Section 8 of the Federal Coal Leasing
Amendments Act of 1976
(P.L. 94-377)



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THE SECRETARY OF THE INTERIOR

WASHINGTON

May 8, 1990

Honorable J. Danforth Quayle
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

In compliance with Section 8 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Public Law 94-377, which amended Section 8B of the Mineral Leasing Act (MLA) (30 U.S.C. 208-2), I am pleased to transmit to you the Federal Coal Management Report, Fiscal Year 1989.

This report summarizes the major coal management and related activities carried out under the Federal Coal Management Program during Fiscal Year (FY) 1989. A record 211.4 million tons of Federal coal were mined in FY 1989, nearly 22 percent of the total U.S. production. The Federal coal produced had an estimated value of \$2.2 billion, and generated \$186.8 million in royalties. One-half of those royalty receipts were returned to the States in which the production occurred. Production increased by 13.0 percent and royalties by 10.3 percent over FY 1988.

The Federal production for FY 1977, the first year reported to Congress under FCLAA, totalled only 50 million tons, and was valued at \$433 million. Royalties for FY 1977 amounted to \$9.9 million. The significant increase in royalty since FY 1977 is due in part to the increases in production, but is primarily a result of the increased number of leases paying a percentage of production value as royalty, as is mandated by the MLA as amended by FCLAA. These royalty rates are considerably higher than the cents-per-ton royalty rates previously in effect.

Statistically, the report features details of Federal coal production, royalties, total lease acreages and recoverable reserves, and presentations of important leasing and lease operations actions that transpired during FY 1989.

I trust you will find the report informative.

Sincerely,

Manuel Lujan Jr.

Enclosure

cc: Senate Committee on Energy and Natural Resources

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PREFACE

The annual Federal Coal Management Report, mandated by the Federal Coal Leasing Amendments Act of 1976 (FCLAA) focuses on the implementation of the Federal Coal Management Program during Fiscal Year (FY) 1989. This will be the thirteenth to be transmitted to Congress.

This report is divided into four major parts: (1) Introduction summarizing the status of Federal coal lands and current leases and applications; (2) Accomplishments in the Federal Coal Management Program briefly describing the major accomplishments in the Federal Coal Management Program in FY 1989; (3) Litigation briefly discussing appeals concerning Federal coal activities; and (4) Major Issues for 1990, providing a brief description of current issues concerning the Federal Coal Management Program.

There are also a number of appendices containing comprehensive information detailing the responsibilities and activities of the Bureau of Land Management (BLM), Minerals Management Service (MMS), Geological Survey (GS), Office of Surface Mining Reclamation and Enforcement (OSM), Fish and Wildlife Service (FWS), Department of Agriculture/Forest Service (FS), and Department of Justice (DOJ). Coal statistics are also included.

The Minerals Management Service statistics for FY 1989 represent production and royalty reported based on accounts receivable during the fiscal year. The royalty management statistics do not represent actual production achieved or royalty accrued on that production during FY 1989 due to adjustments for prior years.

ACKNOWLEDGMENTS

This report was prepared in the Bureau of Land Management (BLM) by a team headed by Tony Ferguson, Division of Solid Mineral Operations, assisted by the staffs of the Division of Solid Mineral Operations, Division of Solid Mineral Leasing, and the Division of Minerals Policy Analysis and Economic Evaluation.

The FY 1989 Federal Coal Management Report has been reorganized from previous years and contains significant new information reflecting activities in FY 1989 and projected activities in FY 1990.

This report was reviewed by the Department of Interior's Office of the Solicitor and DOJ. Additional sections were provided by the GS, MMS, OSM, FWS, FS, and DOJ.

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CHAPTER 1

INTRODUCTION

On August 4, 1976, Congress amended the coal provisions of the Mineral Leasing Act (MLA) with the enactment of the Federal Coal Leasing Amendments Act of 1976 (FCLAA). Section 8B of MLA (30 U.S.C. 208-2), added by Section 8 of FCLAA, requires an annual report on leasing of and production from coal lands; a summary of management, supervision and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards and amount of leasing and production from mining operations on Federal coal lands. The report must also contain a section by the Attorney General on competition in the coal and energy industries including an analysis of whether the antitrust provisions of MLA and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry. The annual Federal Coal Management Report fulfills the requirements of section 8B. DOJ reporting requirements are also met with this report.

In response to the amended provisions of MLA, the Secretary of the Interior established a new Federal Coal Management Program in 1979, comprised of two primary components: (1) leasing and (2) management of pre-lease and post-lease operations. Although the primary responsibility for the program is in the Department of the Interior (DOI), specifically in BLM, MMS, OSM, GS, and FWS, two additional agencies have important roles: FS (land management planning responsibilities for lands under its jurisdiction) and DOJ (competition in the coal and energy industries).

Chief components of leasing include land-use planning, competitive regional lease sales, leasing by application, disposition of pending preference right lease applications, lease issuance, and lease exchanges.

Management of pre-lease and post-lease operations (which include all activities that occur after issuance of a lease, license, or permit) includes responsibility for oversight of exploration and mining. Primary components include: inspection and enforcement and production verification, and royalty rate oversight. Other components include ensuring orderly and efficient exploration, development, mining, preparation, and handling of coal for conservation of coal or other resources; ensuring maximum economic recovery of coal; and ensuring that operations meet requirements for diligent development and continued operation and other provisions of MLA, regulations and lease terms, such as approval of exploration, mining, and reclamation plans and that such operations are in compliance with approved plans.

The Federal Government owns about one-third of the Nation's coal resources. Coal resources owned and administered by the Federal Government are located on approximately 75.6 million acres of land principally in the western United States. Western Federal lands contain approximately 60 percent of the total western coal reserve base. An additional 20 percent of the coal resources in the West are managed or impacted by the Federal Government by virtue of: (1) the commingling of State and private

coal reserves with Federal leases, and (2) trust responsibilities for Indian lands.

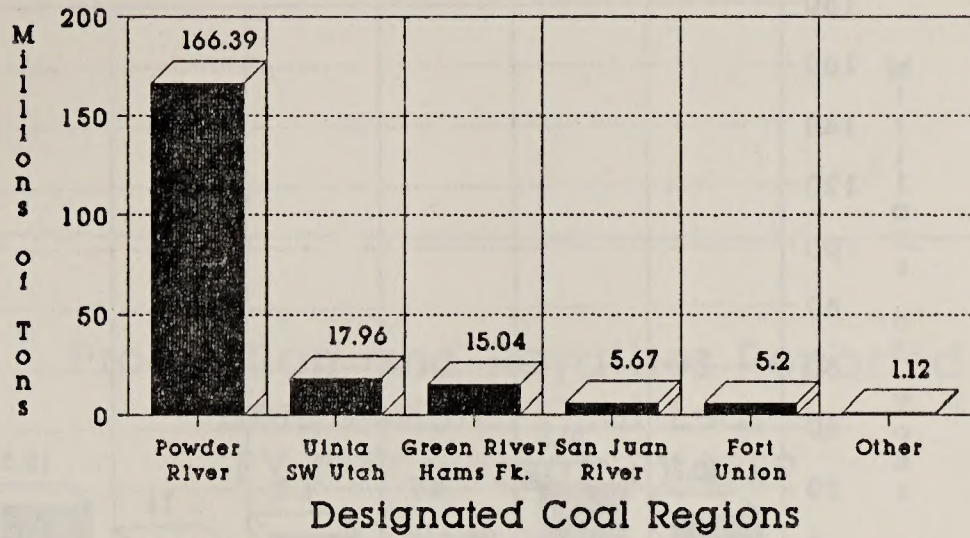
In FY 1989, 211.4 million tons of Federal coal were mined (see Figure 1 for regional distribution), a significant increase of 13.0 percent from the 187.0 million tons of Federal coal mined in FY 1988. This FY 1989 production accounted for approximately 21.8 percent of the total U.S. production, up 2.3 percent from the 19.5 percent of the total U.S. production in FY 1988. Total U.S. production in FY 1989 was approximately 969 million tons, as compared to 960 million tons in FY 1988.

In FY 1989, total reported royalties on Federal coal leases were 186.8 million dollars (see Figure 2 for regional distribution), a 10.3 percent increase from the total reported royalties of 169.4 million dollars in FY 1988. This increase in reported royalties is due primarily to the increase in production. The remainder of the increase is a result of the increasing number of producing leases paying a percentage of production value, as is

now mandated by MLA, which is considerably higher than the previous cents-per-ton royalty rates. Figure 3 graphically depicts the production and royalties reported on a State-by-State basis for Federal coal leases in FY 1989. Figure 4 illustrates the rise in production and royalties reported on Federal coal leases from FY 1978 through FY 1989.

As of September 30, 1989, there were 516 Federal coal leases covering 778,320.87 acres and containing approximately 16.03 billion tons of recoverable coal reserves. During FY 1989, 24 Federal coal leases were accepted for relinquishment, covering 20,407.59 acres and containing approximately 129 million tons of recoverable reserves. At the end of FY 1989, 19 Federal coal leases were pending relinquishment. Also during FY 1989, 3 Federal coal leases were terminated for failure to produce coal in commercial quantities at the end of 10 years. These 3 Federal coal leases covered 240 acres and contained 1.44 million tons of recoverable reserves.

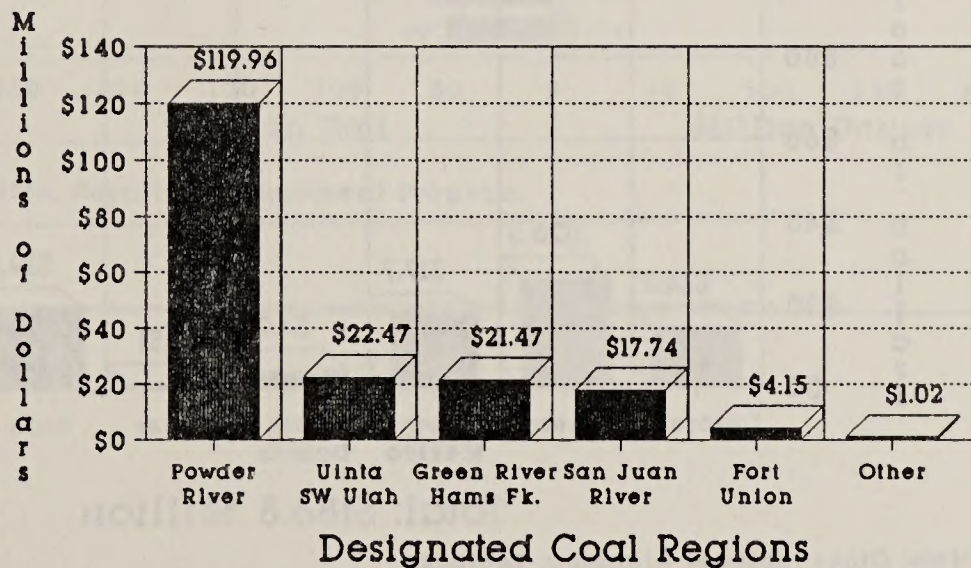
Federal Coal Leases - FY 1989 Production
Tons Produced, by Region
Total Production of 211.4 Million Tons



Note: Other includes those leases not in a designated coal region.
 Source: MMS, Royalty Management Program

Figure 1

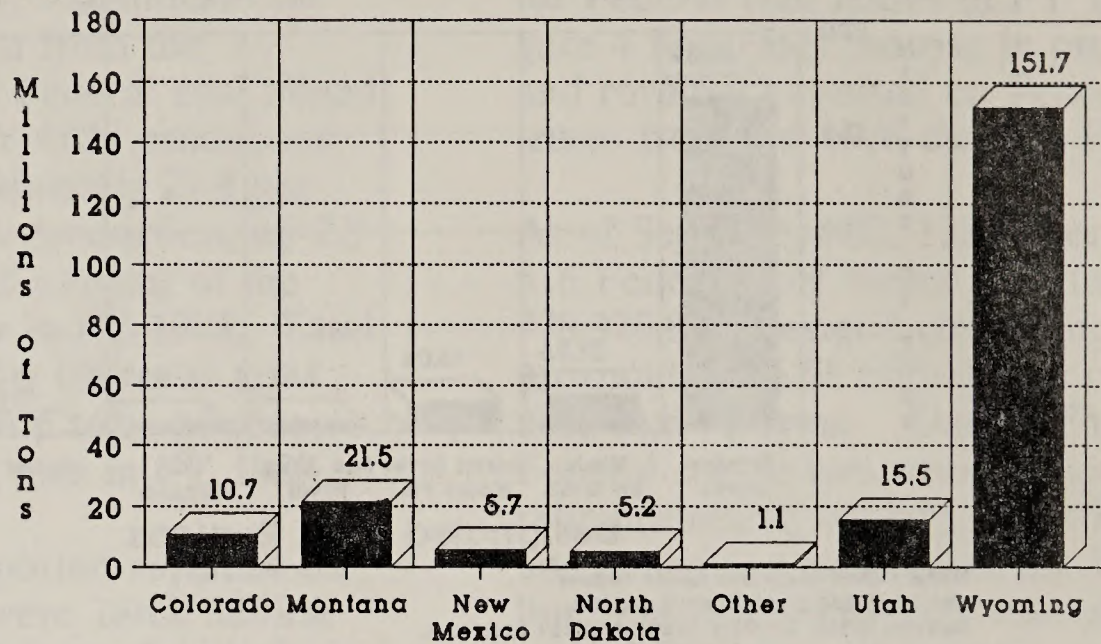
Federal Coal Leases - FY 1989 Royalties
Dollars Generated, by Region
Total Royalties: \$186.81 Million



Note: Other includes those leases not in a designated coal region.
 Source: MMS, Royalty Management Program

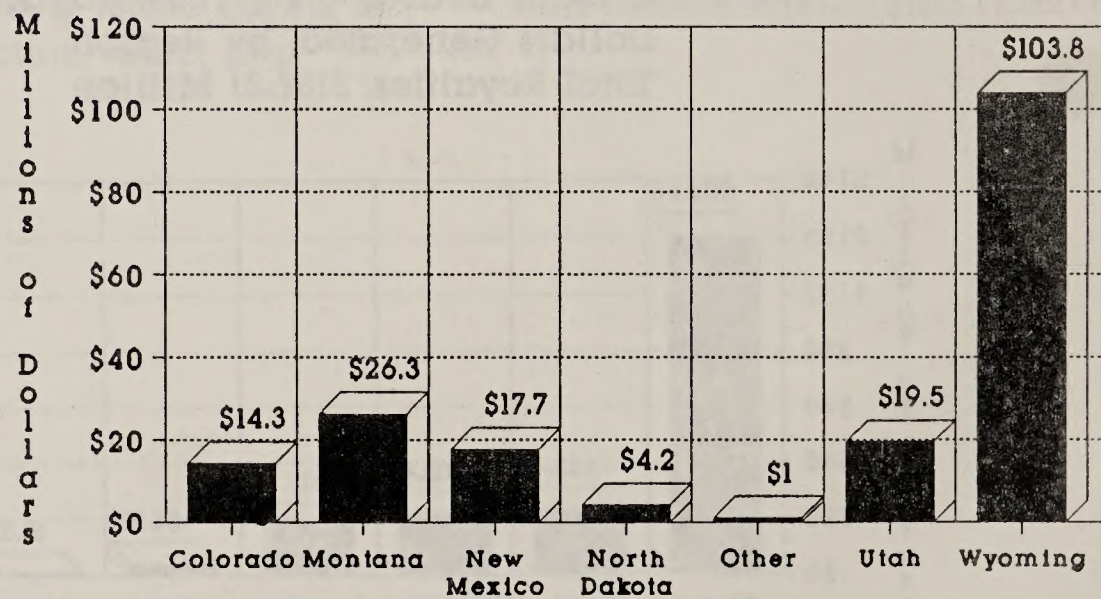
Figure 2

Federal Coal Leases - FY 1989
Production Reported by State



Total: 211.4 Million Tons

Federal Coal Leases - FY 1989
Royalties Reported by State

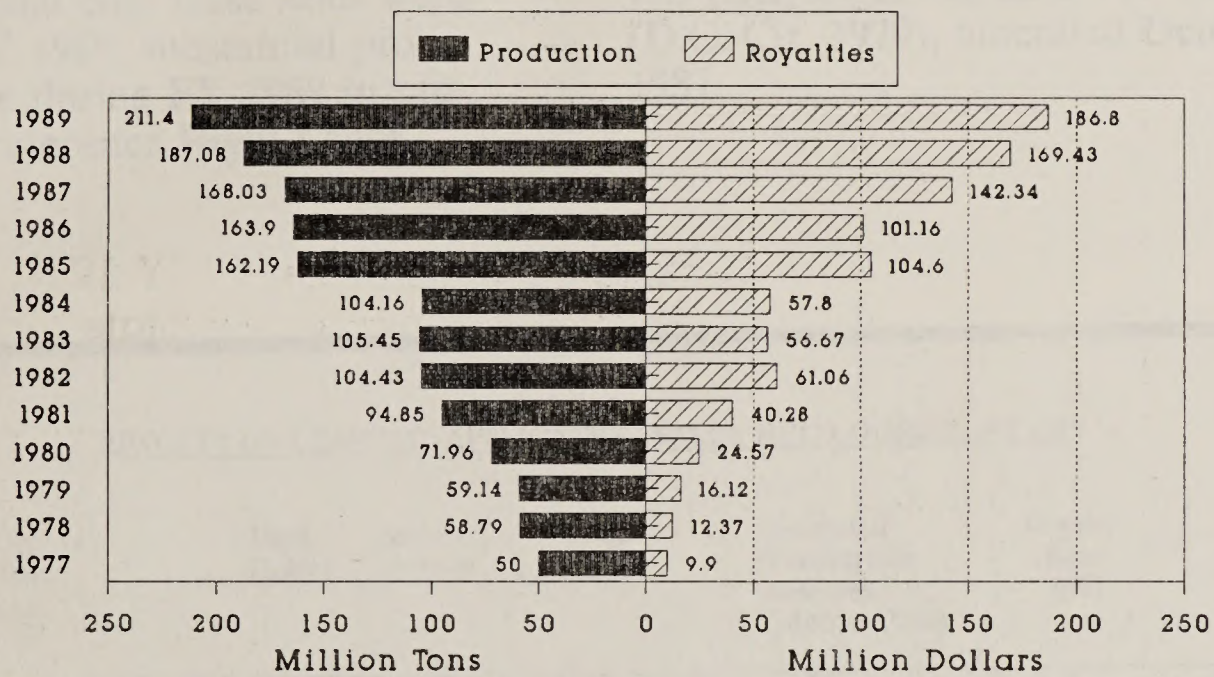


Total: \$186.8 Million

Note: Other includes Alabama, Kentucky, Oklahoma, and Washington
Source: MMS, Royalty Management Program

Figure 3

Production and Royalties Reported from Federal Coal Leases FY 1977 through FY 1989



Source: MMS, Royalty Management Program

Figure 4

Figure 1
 Production of ...



Figure 1
 Production of ...

Figure 1

Production of ...

CHAPTER 2

ACCOMPLISHMENTS IN THE FEDERAL COAL MANAGEMENT PROGRAM

Leasing Program

Two lease sales were held for tracts located in Utah and West Virginia, in response to applications for lease sale. These sales indicate the current market situation for Federal coal which is that of interest in isolated specific tracts within decertified Federal coal production regions. The results of these sales are given in Table 1.

While no regional coal lease sales were held during FY 1989, substantial progress was made during FY 1989 in processing coal Preference Right Lease

Applications (PRLAs). As of September 30, 1989, there were 62 coal PRLAs remaining. (See Table 2 for information about these PRLAs.) Major accomplishments included the publication of two final environmental impact statements (FEISs) for three coal PRLAs located in Colorado. These FEISs complied with the requirements of the amended court order in *NRDC v. Berklund*, 458 F.Supp. 925 (D.D.C. 1978), aff'd 609 F.2d 553 (D.C. Cir. 1979), amended October 26, 1987.

RESULTS OF LEASE-BY-APPLICATION SALES HELD DURING FY 1989

State	Date of Sale	High Bidder	Serial Number	Acreage	Estimated Recoverable Reserves (Million Tons)	Royalty Rate (%)	Bonus Bid (\$/acre)
Utah	4/17/89	Coastal States Energy Co.	U-63214	9,905	84	8	\$1635
West Virginia	7/20/89	Lynn Land Co.	WVES-39061	20	0.2	12.5	\$ 150

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, *Solid Leasable Minerals System*, September 30, 1989.

Table 1

CURRENT STATUS OF PRLAs, PRLAs WITHDRAWN OR REJECTED
DURING FY 1989, BY STATE

State	Number of PRLAs 10/01/88	Acres	PRLAs Withdrawn/ Rejected	Acres	Number of PRLAs 9/30/89	Acres
Alaska	-	--	--	--	-	--
Colorado	5	10,745	--	--	5	10,745
Montana	3	11,987	--	--	3	11,987
New Mexico	26	75,510	--	--	26	75,510
Utah	11	38,909	--	--	11	38,909
Wyoming	<u>46</u>	<u>77,439</u>	<u>29</u>	<u>43,826</u>	<u>17</u>	<u>33,613</u>
Total	91	214,590	29	52,428	62	170,764

Source: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals System, September 30, 1989.

Table 2

No PRLAs were withdrawn by the applicants during FY 1989, but 29 PRLAs located in Wyoming were rejected. Actions on 18 PRLAs, including four that were rejected, have been appealed to the IBLA.

Processing action on 22 PRLAs located in the States of Montana, New Mexico, and Utah continued to be prohibited by the statutory ban on processing PRLAs located in wilderness study areas.

Federal-State Cooperation

The charters for all regional coal teams (RCTs) were in effect at the beginning of FY 1989. The charters for the Fort Union and Uinta RCTs expired at the

end of FY 1989. The Uinta-Southwestern Utah RCT charter was renewed at the beginning of FY 1990, and the Fort Union RCT charter was in the process of being renewed.

Each RCT held at least one meeting during FY 1989, and the San Juan River RCT held two meetings. The Green River-Hams Fork, Fort Union, and San Juan River RCTs adopted regional data adequacy standards and guidelines for use in delineating coal lease tracts, evaluating the environmental impacts of coal leasing, and determining tract values. The Powder River RCT met to consider whether to resume regional activity planning but deferred that decision in order to analyze whether or not to decertify

the region. On October 31, 1989, the RCT recommended decertification of the region. The BLM Director in January, 1990, accepted the recommendation and the region was decertified.

The Federal-State Coal Advisory Board (FSCAB) met in November, 1989 to review regional coal leasing activities, discuss the long-range market outlook, and to consider whether or not to recommend a long-range coal leasing planning schedule to the Secretary. The Board recommended deferral of a long-range lease sale planning schedule. The Board, at its previous meeting in 1987, recommended, and the Secretary adopted, deferral of a long-range schedule because of the slackened demand for Federal coal leasing.

Operations Program

The BLM published a proposed rule-making in the Federal Register (FR) on July 29, 1988, to change the underground royalty rate to a flat rate between 5 and 8 percent. Comments were requested from the public with regard to a royalty rate for coal to be mined by underground methods. The change evolved from a ruling by the United States Court of Appeals for the Tenth Circuit. In part, the court's decision held that while BLM could apply an 8 percent royalty to a lease for coal to be mined by underground methods at the time of readjustment, due consideration of the "if conditions warrant" test of the regulations was necessary. The proposed rule-making would eliminate the need for such a test. After review of the comments received, a final rulemaking was published January 26, 1990 (55 FR 2653), which established a fixed royalty

rate of 8 percent for Federal underground coal. In addition, BLM published in the Federal Register on August 4, 1988, a Notice of Proposed Action to add a new category to the royalty rate reduction guidelines under which an application for a royalty rate reduction could be filed--the "regional or State or area-wide royalty rate differential" category. The purpose of the category is to allow for evaluation of a reduction application based on the differential between Federal and non-Federal royalty rates under conditions where Federal coal is being bypassed or left undeveloped due to a higher Federal royalty rate in those areas where Federal coal does not dominate the market. A Notice of Final Action, promulgating the fifth category, was published in the Federal Register on February 27, 1990 and became effective on March 29, 1990. Under the new category, a State or area could be nominated for consideration for qualification by petition from the State Governor, industry representatives, or groups of Federal lessees.

The BLM continued drafting proposed revisions to the Federal Coal Management Rules (43 Code of Federal Regulations (CFR) Group 3400) during FY 1989. Some revision is necessary based on the experience gained during the last 7 years since the rules were published as final (43 CFR Part 3400, 47 FR 33114, July 30, 1982, and 30 CFR Part 211, 47 FR 33179, July 30, 1982, redesignated at 43 CFR Part 3480, 48 FR 41589-41594, September 16, 1983). These revisions pertain primarily to operations, but will also impact certain leasing aspects of the Federal Coal Management Program. There will be minor changes to Part 3400--General and 3410--Exploration Licenses and minor technical changes to Part 3420--Competitive Leasing

(concerning confidentiality) and Part 3440--Licenses to Mine (concerning the duration of a mining license).

The primary areas of consideration are 43 CFR Part 3450--Management of Existing Leases (lease readjustments, cancellations and relinquishments); Part 3470--Coal Management Provisions and Limitations (e.g., rent, royalty, and bonding); and Part 3480--Coal Exploration and Mining Operations (e.g., diligent development, continued operation, and advance royalty). An overall consolidation and restructuring of subject matter is also anticipated. It is anticipated that exploration standards will be consistent with those of OSM.

During FY 1989, BLM continued the implementation of a nationwide quality control program for the current Solid Leasable Minerals System (SLMS) data base. The BLM completed the evaluation and requirement identification phase of the Life Cycle Management process for the replacement of the current system with a microcomputer-based distributed database system, SLMS Phase II. The new system will utilize a fourth-generation database management language to provide enhanced capabilities for data tracking and reporting. In addition, information not previously included in SLMS will be a part of the new system. Improved data manipulation and printed report capabilities will be featured in SLMS Phase II.

Program Review

In FY 1989, BLM completed the Internal Control Review (ICR) of the I&E/PV program begun in FY 1988. The ICRs are conducted in accordance with OMB A-123 procedures. Two coal producing states, Montana and Wyom-

ing, were part of ICRs conducted in FY 1989. Alternate Internal Control Reviews (AICRs) were conducted in Utah, New Mexico, Colorado, and Eastern States Offices.

Inspection and Enforcement and Production Verification (I&E/PV)

In FY 1989, the Solid Minerals Assistance Team (SMAT) program continued to implement the recommendations in the Secretarial Report to the Congress on the Adequacy of Royalty Management for Solid Minerals prepared under section 303 of the Federal Oil and Gas Royalty Management Act (FOGRMA). SMATs monitor implementation of the national policy and guidelines to promote uniformity and consistency nationwide. SMATs are composed of Washington Office Operations staff, technical personnel from the State being visited, and technical staff from at least one other State. Washington was the only coal producing State visited by a SMAT in FY 1989. The SMATs participated in a mine inspection and reviewed the mine-specific I&E/PV plans, inspection reports, SLMS data, and production verification procedures. The primary focus resulting from the SMATs is on the need for quarterly production verification. Other important focuses are on inspections for producing operations and on methods of independent production verification.

CHAPTER 3

LITIGATION

BLM LITIGATION

Powder River Sale

Two lawsuits challenged the April 1982 regional coal lease sale for the Powder River Region. The cases were originally filed in the U.S. District Court for the District of Columbia, where a motion for a restraining order against the lease sale was denied. On the government's motion, the cases were consolidated and transferred to the federal district court in Montana. The court heard arguments in December 1982 on cross motions for summary judgment and motions to dismiss specific allegations. The Montana court then separated the cases for decision.

In Northern Cheyenne Tribe v. Hodel, Civil No. 82-116 (D. Mont.), the Tribe asserted that the EIS prepared for the sale was deficient because of its alleged failure to discuss adequately the effects of the proposed regional leasing on the plaintiff's reservation. On May 28, 1985, the court ruled in favor of the Tribe and declared void the leases issued in Montana as a result of the sale. DOI petitioned the court for reconsideration of its order to cancel the leases. The lessees petitioned the court to intervene and for reconsideration. The court granted the motions for intervention, stayed its cancellation order and enjoined all lease operations. On October 6, 1986, the court granted the motions and (1) allowed one lessee to mine its three mine maintenance leases provided

mining did not cause "significant socio-economic impacts" on the Tribe and (2) directed the Secretary to suspend the remaining leases pending supplementation of the EIS and appropriate review of lease issuance, terms and conditions. The Tribe then appealed the October 1986 order to the U.S. Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals for the Ninth Circuit issued its amended decision on July 11, 1988, in which it reversed and remanded the October 6, 1986, order. 842 F.2d 224. The Ninth Circuit first found that the district court possessed its full range of traditional equity power to fashion appropriate injunctive relief. The Ninth Circuit then found that the district court did not abuse its discretion when it amended its order to suspend the leases rather than void them. However, the Ninth Circuit held that the district court failed to consider "the public interest on the record" and directed the court to rehear arguments on this issue. The Ninth Circuit then found two other defects with the injunction. First, it held that the Secretary failed to comply with his regulations because the regional coal team did not have sufficient input from the Tribe. Therefore, the Ninth Circuit ruled that if the district court decides to re-issue an injunction suspending the leases, it must order the Secretary to redo the activity planning in which tracts

are identified, ranked, analyzed and selected. Second, the Ninth Circuit ruled the injunction must prohibit the Secretary from considering the existence of, and investment in, the leases when he prepares the supplemental EIS. Finally, the Ninth Circuit ruled that the district court had an inadequate record on which to determine the costs to the Tribe, the lessee and the public which may result from mining or not mining while the supplemental EIS is being prepared. The Ninth Circuit ordered the district court to hold an evidentiary hearing on this issue. The Ninth Circuit subsequently denied the government's motion for rehearing.

Following the remand, no action occurred other than a motion for attorney's fees by the Tribe. In July 1989, BLM issued its draft supplemental EIS for public comment. On October 25, 1989, the district court awarded the Tribe \$338,309 for attorneys' fees, costs and expenses. The court also scheduled a status conference on the issues remanded by the Ninth Circuit.

In National Wildlife Federation v. Burford, Civil No. 82-117 (D. Mont.), the plaintiff groups challenged the presale procedures and the sale itself. The plaintiffs alleged that DOI failed to receive fair market value for the lease tracts sold, that the land use plans underlying the sale acreage were formulated in violation of statutory planning standards, that the Secretary's rules (and resulting plans) on the treatment of re-claimability in the federal lands review under section 522(b) of SMCRA are legally deficient, that certain changes in the treatment of surface owner consents were illegal, and that certain tracts were not delineated properly. The State of Wyoming and several lessees intervened

as defendants. On September 3, 1985, the court ruled in favor of DOI on the tract delineation and surface owner consent issues, dismissed the allegations concerning re-claimability, and postponed ruling on the land use planning and fair market value issues until the Department supplemented the administrative record and the parties filed additional briefs. 677 F. Supp. 1445. On September 22, 1987, the court granted summary judgment in favor of DOI on the fair market value and land use planning issues. Plaintiffs then filed an appeal to the Ninth Circuit on the fair market value issue.

The Ninth Circuit issued its decision on March 30, 1989. 871 F.2d 849. The court held that plaintiffs had standing because the amount of the bonus bids was split with the state for mitigation of social and economic impacts, 30 U.S.C. § 191, and plaintiffs' members would be adversely affected if this amount were improperly low. Also, plaintiffs' interests might be affected by increased coal production resulting from less than fair market value pricing. The court then affirmed the district court's ruling in favor of DOI on the fair market value issue on three grounds. First, the Ninth Circuit ruled that DOI's change in bidding procedure was not arbitrary or capricious. In any event, the court noted that the result of the bidding procedure was the important element. Second, the court found that DOI had a reasonable basis for its pre-sale estimates of fair market value. Third, the court held even if certain pre-sale irregularities occurred, plaintiffs were unable to show that such irregularities prevented a fair return on the sale of the leases.

Coal Management Rules

In Natural Resources Defense Council v. Burford, Civil No. 82-2763 (D.D.C.), eight groups have joined to challenge the July 1982 revisions to the July 1979 coal program rules. The suit seeks: (1) to enjoin implementation of the revised coal regulations; (2) to declare the revised regulations improperly issued; and (3) to enjoin any future coal lease sales until the reclaimability standard of section 522(a)(2) of SMCRA is applied to the lease tracts prior to a sale. In support of their lawsuit, the plaintiffs allege that DOI, in amending the rules, violated NEPA and various provisions of FCLAA, FLPMA, and SMCRA. The parties filed and fully briefed cross motions for summary judgment.

After Secretary Hodel announced his decisions on the coal program in February 1986, the court directed the parties to indicate the effect on the case of these decisions. The plaintiffs then agreed to dismissal of their NEPA allegations and to focus the issues on: (a) the limited use of pre-FLPMA land use plans for coal leasing; (b) public participation in the coal leasing program; (c) the policy established in 1979 of determining reclamation suitability at the mine permit stage rather than prior to leasing; (d) the diligent lease development requirements for coal leases issued prior to FCLAA; and (e) allowing an extension of time to submit a mine plan for reasons beyond the lessee's control. Supplemental briefs were filed.

On November 17, 1988, the court dismissed the case, holding that plaintiffs had failed to show that they have the requisite standing to maintain this case. On November 9, 1989, the court granted plaintiffs' motion for reconsideration and

gave them 60 days to supplement the record with information to support their claim of standing.

In NWF/NRDC v. Hodel, Civil No. 88-0301 (D.D.C. February 15, 1988), plaintiffs challenge the adoption of regulations which clarified and modified the treatment of coal in BLM's land use planning process, including the unsuitability criteria which are used to exclude land from consideration for coal leasing. The regulations, which became effective on January 7, 1988, implemented one of the Secretary's February 1986 decisions on the federal coal management program.

The lawsuit seeks a declaratory judgment on two counts. First, plaintiffs allege DOI violated NEPA because no adequate environmental impact statement or environmental assessment was prepared for the proposed or final regulations. Second, plaintiffs allege DOI acted arbitrarily and capriciously because the final regulations fail to include critically needed new criteria, such as reclaimability, wetlands, Class I air quality areas, and sole source drinking water supplies. Plaintiffs also request an injunction to prohibit DOI from issuing any coal leases until it complies with NEPA and the Administrative Procedures Act. The court has ordered the administrative record filed by October 31, 1989, and set a briefing schedule for early 1990.

First Post - FCLAA Lease Readjustment

This is a group of cases relating to the first lease readjustment after enactment of FCLAA for coal leases that were issued prior to FCLAA under section 7 of the MLA. Section 7 made the leases

subject to the right of the Secretary to readjust the terms and conditions of the leases, including royalty provisions, at the end of 20 years "unless otherwise provided by law." 30 U.S.C. § 207 (1970). In section 6 of FCLAA, Congress amended section 7 of the MLA and changed several terms which must be included in federal coal leases. One of the most significant changes was to increase the statutory minimum production royalty rate for surface-mined coal from 5 cents per ton to 12-1/2 percent of the value of the coal. Amended section 7 did not expressly state that pre-FCLAA coal leases were subject to these new terms. The Solicitor, however, concluded that DOI is required by law to include the new FCLAA section 6 terms in pre-FCLAA coal leases upon their first post-FCLAA readjustment. Solicitor's Opinion M-36939, 88 I.D. 1003 (1981).

Procedurally, BLM notifies lessees of its intent to readjust their leases prior to the 20-year anniversary dates. For some, BLM sent the actual proposed terms and conditions shortly after the anniversary dates. For other leases, BLM issued the decision on the lessee's objections to the proposed terms and conditions after the anniversary date. Many lessees challenged the timeliness of the readjustments and the new readjustment terms before IBLA, which generally affirmed BLM. Several suits for judicial review followed.

In FMC Wyoming Corporation v. Hodel, 816 F.2d 496 (10th Cir. 1987), cert. denied 108 S.Ct. 772 (1988), and Coastal States Energy Corporation v. Hodel, 816 F.2d 502 (10th Cir. 1987), the U.S. Court of Appeals for the Tenth Circuit affirmed all but one of DOI's policies on coal lease readjustments. The Tenth

Circuit denied petitions for reconsideration on July 8, 1987. On January 25, 1988, the Supreme Court denied FMC's petition for certiorari. 108 S.Ct. 772. Coastal did not petition. In Lone Star Steel Co. v. Hodel, No. 86-2146 (10th Cir. November 23, 1988), cert. denied sub nom. East Texas Steel v. Lujan, - 110 S.Ct. 65 (1989) and Gulf Oil Corp. v. Clark, No. 87-2137 (10th Cir. December 24, 1987), the U.S. Court of Appeals for the Tenth Circuit summarily dismissed appeals and affirmed U.S. District Court decisions, relying on its FMC and Coastal States decisions.

The two principal positions upheld by the Tenth Circuit in FMC and Coastal were: (1) notice of intent to readjust the terms of a coal lease issued prior to passage of FCLAA which is sent by BLM to the lessee on or before the 20-year anniversary date of the lease "preserves the Department's right to readjust the terms within a reasonable time thereafter" even if the proposed terms are not sent or made final until after the anniversary date; and (2) the minimum 12-1/2 percent production royalty rate added to section 7 by FCLAA for surface-mined coal, and other mandatory lease terms added by FCLAA such as diligence, must be included in pre-FCLAA coal leases on their first post-FCLAA readjustment. In Coastal, the court also affirmed as reasonable the 8 percent production royalty rate for underground coal under the regulations at 43 C.F.R. § 3473.3-2(a)(3). However, the court then held that the provision of this regulation which allows a lesser production royalty rate for underground coal of not less than 5 percent "if conditions warrant" must be considered by DOI at the time of readjustment.

Following the Supreme Court's denial of

FMC's petition for certiorari, several cases pending within the jurisdiction of the Tenth Circuit were voluntarily dismissed. Ark Land Co. v. Hodel, No. 87-2790 (10th Cir. March 31, 1988); Meadowlark Farms, Inc. v. Hodel, Civil No. 87-0024 (D. Wyo. September 30, 1988); Ark Land Co. v. Hodel, Civil No. 87-0254 (D. Wyo. March 23, 1988); Exxon Coal U.S.A., Inc. v. Hodel, Civil No. 87-0088 (D. Wyo. October 24, 1988).

Agreement was reached with three lessees of underground coal to obtain payment of accrued royalty at 8% in return for reducing the late payment charges to the amount of interest that would have been due if the royalty had been 5%. The agreements also provide that the leases will be subject to whatever royalty rate is adopted for underground coal as a result of the rulemaking in progress (see Chapter II above). These agreements resulted in the dismissal of Powderhorn Properties Co. v. Hodel, Civil No. 87-350 (D. Colo. December 8, 1989), Coastal States Energy Co. et al. v. Hodel, Civil No. 87-0293A (D. Utah Sept. 12, 1989); Coastal States Energy Co. v. Hodel, Civil No. 85-C-0665S (D. Utah Sept. 15, 1989), and should result in the dismissal of Coastal States Energy Co. v. Watt, Civil No. C83-0730J (D. Utah).

Two additional cases within the Tenth Circuit are pending in district court: General Electric Holdings Inc. et al. v. Hodel, Civil No. 87-979 (D. Colo.) and Bear Coal Co., Inc. v. Hodel, Civil No. 87-1493 (D. Colo.). Within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, only one case is pending: Western Energy Co. v. Hodel, Civil No. 88-12 (D. Mont.). Cross-motions for summary judgment have been filed in this case. A second case was voluntarily

dismissed on March 25, 1988. Consolidation Coal Co. v. Hodel, Civil No. 85-361 (D. Mont.). In three consolidated cases in the United States District Court for the District of Columbia, the court, relying on the FMC and Coastal States decisions, summarily affirmed the Department's readjustments. Peabody Coal Co., et al. v. Hodel, Civil Nos. 87-1359, 87-2325, and 87-2669 (D.D.C. October 11, 1988). All three cases were appealed to the U.S. Court of Appeals for the D.C. Circuit where oral arguments will be scheduled for December 1989. One other case filed in the District of Columbia has been stayed pending the outcome of the appeal in Peabody. Exxon Coal U.S.A. v. Hodel, Civil No. 88-2402 (D.D.C.).

10-year Readjustment

Trapper Mining, Inc. v. Hodel, Civil No. 88-1812 (D. Colo.), presents the first judicial challenge to DOI's authority to readjust a pre-FCLAA lease 10 years after failure to readjust the lease timely. The U.S. Court of Appeals for the Tenth Circuit has previously held that the Department's failure to notify a lessee prior to the date for readjustment of the Department's intent to readjust constituted a waiver of the right to readjust. Rosebud Coal Sales Co., Inc. v. Andrus, 667 F.2d 949 (10th Cir. 1982). Section 7 of the MLA sets out the term and conditions for coal leases. One such term in the MLA prior to the enactment of FCLAA authorized the Secretary to readjust the terms and conditions of a lease every 20 years. In section 6 of FCLAA, Congress amended this provision of section 7 and authorized the Secretary to readjust coal leases every 10 years after the initial 20-year primary term. IBLA has ruled that this 10-year

readjustment provision allows readjustment of a pre-FCLAA coal lease 10 years after DOI failed to timely readjust on a 20-year post-FCLAA anniversary date. On November 9, 1989, after hearing oral argument regarding cross-motions for summary judgment, the U.S. District Court for the District of Colorado ruled from the bench affirming the Department's position. Two other 10-year readjustment cases are pending in U.S. District Courts. Wyodak Resources Development Co. v. Lujan, Civil No. 89-057 (D. Wyo.) and Kanawha and Hocking Coal and Coke Co., et al. v. Lujan, Civil No. 89-C-172-J (D. Utah). Both cases have been briefed and argued.

Alabama Coal Lease Sale

In Apex Mining Co. and Jerry Williams v. United States, No. 323-87 (Cl. Ct.), plaintiff seeks to recover the coal lease bonus bids which he paid for five federal coal leases in Alabama at 1981 and 1982 coal lease sales. He alleges BLM failed to disclose or provide, or ignored, certain information prior to the lease sale that was essential to form a contract between the parties.

Advance Royalty

In Cyprus Western Coal Co. v. Hodel, Civil No. 88-1748 (D. Colo.), plaintiff seeks review of a decision by the IBLA which affirmed an MMS directive for plaintiff to pay advance royalty in lieu of continued operation on its coal lease. On November 9, 1989, the court granted plaintiff's motion for summary judgment. The coal lease was issued in 1975 and contained specific continued operation production levels for certain lease years.

The lease allowed payment of an advance royalty in lieu of this minimum production at a specified rate. Language in the lease stated that the lease was subject to all regulations of the Secretary "now or hereafter in force." In 1976, DOI issued diligence regulations applicable to leases issued prior to FCLAA. (These rules were revoked in 1982.) The 1976 regulations required advance royalty only in lieu of continued operation. Plaintiff contended that it did not owe DOI advance royalty, arguing that the 1976 regulations superseded the lease term on advance royalty. IBLA disagreed and held that incorporation of later regulations in a lease only includes regulations which are procedural or provide standards for undefined lease terms and conditions. DOI also argued that the reservation clause only applied to subsequent regulations not expressly inconsistent with a specific provision of the lease. The court rejected this argument, holding that the lease term stated that the lease was subject to all subsequently enacted regulations which were then automatically incorporated in the lease upon promulgation. The court remanded the case to IBLA for further consideration.

Federal Coal Under Allotted Lands

Eight Navajos holding beneficial title to allotted land in New Mexico filed a class action in Etcitty, et al. v. United States, et al., Civil No. 83-1408 (D.N.M., filed August 31, 1983), seeking to quiet title in the Indian holders of beneficial title to coal or oil and natural gas underlying the allotted land and to divest the United States of title to these minerals. Plaintiffs claim that the mineral reservations in the trust patents for the land were made contrary to the Dawes Act, as amended, which authorized the allot-

ments, or in the alternative, that they are entitled to supplemental patents for lands conveyed with a coal reservation pursuant to the Act of April 14, 1914, 30 U.S.C. § 82 (1982), where lands covered by the coal reservation were later classified for a period of time as non-coal in character. In 1985, a plaintiffs' class of 16,000 members was certified and the class was noticed, at the expense of the plaintiffs, in 1989. Codefendants include holders of PRLAs or coal leases for federal coal underlying the allotted surface. The court is considering several procedural motions, including plaintiffs' motion to certify a defendants class.

Exchanges

Plaintiff Whitney Benefits, Inc., owns two tracts of coal in the Tongue River Valley of Wyoming which it has leased to plaintiff Peter Kiewit and Sons, Inc., for development. The State of Wyoming determined that the area met the definitions of an alluvial valley floor (AVF) under section 510(b)(5) of SMCRA. Section 510(b)(5) prohibits surface mining in an AVF but entitles the owner of the coal to obtain Federal coal in exchange. Plaintiffs filed suit in the U.S. District Court for the District of Wyoming to compel the exchange. Whitney Benefits, Inc., et al. v. Hodel, Civil No. 84-0193 (D. Wyo.). The District Court initially found for plaintiffs that BLM had delayed offering an exchange unduly and ordered that the exchange be completed by August 31, 1985. BLM then determined that the coal had a negative value of 79 million dollars and declined to proffer federal coal in exchange. On December 3, 1985, the court ruled that the exchange must be completed. BLM then tendered a tract of federal coal to the plaintiffs in compliance with the court's order. Plaintiffs objected to the

tender as insufficient. The case is now stayed pending a decision by the Claims Court in Whitney Benefits, Inc. v. United States, No. 499-83 (Ct. Cl.), where plaintiffs seek compensation for a taking. Meanwhile, a company interested in obtaining a competitive coal lease for the coal in the tendered tract has sued DOI to compel a lease sale. Ash Creek Mining Co. v. Lujan, Civil No. 89-0162 (D. Wyo.). The case is in its early stages.

Three land exchanges which BLM has negotiated with railroad affiliates were the subject of litigation by the National Coal Association. One was also the subject of litigation by the Northern Plains Resource Council. The courts rejected two of the NCA challenges. National Coal Association v. Hodel, 825 F.2d 523 (D.C. Cir. 1987) (the Corral Canyon exchange); National Coal Association v. Hodel, 675 F. Supp. 1231 (D. Mont. 1987) (the Circle West exchange). In the third, the court granted a joint motion for dismissal without prejudice. National Coal Association v. Hodel, Civil No. 87-1015 (D.N.M. April 14, 1989) (the Lee Ranch exchange).

The Northern Plains Resource Council, in its case challenging the Circle West exchange in Montana, alleged that, in consummating the exchange, the Secretary did not comply with NEPA, the planning, public interest, and equal value requirements of FLPMA, and the Administrative Procedure Act. Northern Plains Resource Council v. Hodel, Civil No. 85-150 (D. Mont.). The Montana district court ruled in the government's favor on these issues in its consolidated Circle West decision. 675 F. Supp. 1231. On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court. First, the Ninth Circuit held that a separate EIS on the exchange was

not required; DOI complied with NEPA through an EA, lease tract analyses and a regional coal lease sale EIS. Second, the court held that plaintiff had no standing to challenge the equal value of the exchanged land, because they could not demonstrate any linkage between the failure to receive equal value and some alleged injury. Third, the court held DOI reasonably found the exchange to be consistent with the existing land use plan.

MMS ROYALTY LITIGATION

Collection of Accrued Royalty

In Arch Minerals Corp. v. Hodel, Civil No. 88-0113 (D. Wyo.), plaintiff challenged DOI's authority to collect royalty which accrued while plaintiff challenged the readjustment of its coal leases. Plaintiff first argued that DOI is barred from seeking unpaid royalties by DOI's failure to file a compulsory counterclaim in Arch's earlier lawsuits challenging the readjustment of the royalty rates on its coal leases. Second, plaintiff argued that DOI cannot collect unpaid royalties and interest because it failed to issue regulations under the Debt Collection Act. Finally, plaintiff raised several issues concerning the value of its coal for royalty purposes which are also the subject of an administrative appeal to the Director, Minerals Management Service.

On February 24, 1989, the court ruled in favor of DOI on all issues except the coal valuation issues, which the court dismissed without prejudice pending the outcome of the administrative proceeding. As to the compulsory counterclaim, the court found it to be premature in a case challenging the authority to readjust

the terms and conditions. The court then rejected plaintiff's argument that back royalty and interest are subject to the Debt Collection Act, holding that these monies are collected under the authority of the MLA.

OSM LITIGATION SPECIFICALLY ON FEDERAL COAL

Alluvial Valley Floor Determination

Plaintiff Whitney Benefits, Inc., owns two tracts of coal in the Tongue River Valley of Wyoming which it has leased to plaintiff Peter Kiewit and Sons, Inc. The State of Wyoming has determined the area to be an alluvial valley floor (AVF), as defined in section 510(b)(5) of SMCRA. 30 USC § 1260(b)(5). Under section 510(b)(5) the coal in an AVF may not be extracted by surface mining and the owner is entitled to an exchange of Federal coal. As an alternative to this exchange, plaintiff filed suit seeking just compensation for a "taking" of its property as a result of the mining prohibition. Whitney Benefits, Inc. v. United States, No. 499-83 (Cl. Ct.). (Plaintiff also sued to compel the exchange as summarized in Chapter III. A.8 above. Whitney Benefits, Inc. v. Hodel, Civil No. 84-0193 (D. Wyo.)) In an earlier ruling in this case, the U.S. Court of Appeals for the Federal Circuit held that the exchange entitlement under SMCRA does not foreclose the coal owner from seeking to establish a taking for which it must receive just compensation. 752 F.2d 1554.

On October 18, 1989, the Claims Court issued its decision in favor of the plaintiff in the amount of \$60,296,000 plus

interest from the date of enactment of SMCRA, August 3, 1977. The court ruled in favor of plaintiff on most issues, including that the prohibition deprives plaintiff of all economic value of the property and that plaintiff had a reasonable, investment-backed expectation of mining the coal. This latter conclusion was reached despite the need to divert the Tongue River, which would require special permits and purchase of property, in order to mine at least half the coal. The court also ruled the taking occurred upon enactment of SMCRA and not upon the administrative determination that the area was in fact an AVF. DOJ has appealed this decision.

Unsuitability Determination

In BHP-Utah International, Inc. v. United States, No. 782-86 (Cl. Ct.), plaintiff seeks compensation for a "taking" of its federal and state coal leases or, in the alternative, an alleged breach of its federal coal lease contracts for coal leases in the Alton coal field in southwestern Utah near Bryce Canyon National Park. The Secretary determined in 1980 that the leases were unsuitable for surface coal mining in response to an unsuitability petition filed under section 522 of SMCRA. DOJ has filed a motion for summary judgment. Plaintiff's response was filed in late 1989.

CHAPTER 4

MAJOR ISSUES FOR 1990

Outlook for Federal Coal Management Program

There was no competitive regional coal leasing in FY 1989. During the fiscal year, however, there were signs of an increase in interest in Federal coal leasing. At the end of FY 1989 there were six applications for coal lease sales in various stages of processing in BLM State Offices, and four to six new applications are expected during FY 1990. These increases are occurring throughout the coal States--Colorado, the Eastern States, Montana, New Mexico, North Dakota, Utah, and Wyoming--but interest is most marked in Utah and the Powder River Region of Montana and Wyoming, as evidenced by requests for information on Federal coal leasing in general and on leasing procedures in particular.

Pending proposals for amending the Clean Air Act could increase demand for Federal coal in regions where the coal contains low sulfur and is close enough to the midwest utility markets, that is, the Green River-Hams Fork and Powder River Coal Production Regions. Preliminary analyses indicate that, if President Bush's proposals for improving air quality are implemented into law, the demand for Federal coal could increase by up to 10 percent. Some analyses call for potential increases of 20-30 percent, mostly in the Powder River Basin. Current overcapacity in the Green River - Hams Fork and Powder River Coal Production Regions may be sufficient to accommodate the increases, however.

PRLAs

During FY 1990 the BLM will continue to process PRLAs. Some PRLAs are awaiting EISs in accordance with the revised procedures, others are awaiting submission of additional information connected with final showings, and still others are awaiting BLM's completion of the analyses of the final showing information. The FY 1990 Appropriations Act for the Department of the Interior removed the prohibition on processing PRLAs in Wilderness Study Areas. The BLM is preparing guidance to field offices on resumption of processing affected PRLAs.

Exchanges

The DOI conducts two types of exchanges that involve the transfer of coal mineral rights (legislative lease exchanges and Section 206 FLPMA exchanges). Enactment of the FCLAA removed the DOI's general authority to issue coal leases noncompetitively, a revocation that has ruled out all coal lease exchanges except for those specifically legislated by Congress. Where specifically allowed or directed by law, DOI may award a new coal lease to a Federal or Indian coal lease holder in exchange for relinquishment by the lessee of an existing lease or leases. In the lease exchange statutes enacted to date, lease

exchanges have been made on an equal-value basis. The BLM may also consider fee coal exchanges under section 206 of the Federal Land Policy and Management Act (FLPMA) on a case-by-case basis in response to proposals from private fee coal owners. There are some instances where BLM field officials may also identify coal land areas during land-use planning as having fee coal exchange potential. The environmental impacts of proposed exchanges are studied before any exchange is completed. All section 206 exchanges must be of equal value and in the public interest.

I-90 Lease Exchanges. Public Law 95-554 allowed the Secretary to exchange nine coal leases associated with Interstate Highway 90 (I-90) in Wyoming. The nine leases were held by six lessees. One exchange was completed in 1982, another in 1983, and another in 1986. Also in FY 1986, two exchange proposals were rejected as not being in the public interest. Both rejections were appealed to the IBLA, and one of the appeals was subsequently withdrawn and the lease relinquished. In March 1987 the IBLA ruled on the remaining appeal by remanding the exchange decision to BLM to make a formal, written determination on whether or not the exchange was in the public interest. The public interest determination was still under consideration at the end of FY 1989. The sixth lessee relinquished the affected coal lease and is no longer eligible for an exchange.

J-Y Ranch Exchange. The DOI is seeking to acquire a conservation easement on about 1,100 acres of land on the J-Y Ranch, which lies within the Grand Teton National Park, in exchange for Federal coal interests in the Powder River Basin area of Wyoming. An a-

greement signed by the Secretary and the owner of the J-Y Ranch in August 1985 describes the procedures to be followed in processing the exchange. The conservation easement would allow continued use of the property by the owner of the J-Y Ranch but would prohibit intensive development in the future. In late 1987, the owner of the J-Y Ranch donated his interests in the conservation easement to the Sloan-Kettering Institute for Cancer Research. As a result, DOI is now negotiating the exchange with Sloan-Kettering. Sloan-Kettering has selected Federal coal in the Youngs Creek-Ash Creek tracts in exchange. The conservation easement and the selected coal land have been appraised at \$5.6 million. The BLM Wyoming State Director's decision on whether or not to carry out the exchange was pending at the end of FY 1989.

Whitney Benefits Alluvial Valley Floor Exchange. This application was filed under the authority of section 510(b)(5) of SMCRA. The private coal, consisting of two tracts containing approximately 1,326 total acres, is located in the Tongue River Valley about 10 miles north of Sheridan, Wyoming. The applicant would receive Federal coal of equal value in Wyoming in exchange for its coal. The exchange is currently in litigation in both the Wyoming Federal District Court and in the U.S. Court of Claims (see Chapter 3). In accordance with a District Court Order, BLM offered an exchange tract to the applicant, but the applicant had not accepted the offer as of the end of FY 1989. Meanwhile, in October 1989 the U.S. Court of Claims ruled that a taking occurred on August 3, 1977, the date of enactment of SMCRA, and entered judgment for the plaintiff in the amount of \$60,296,000 plus interest from the date of taking.

DOJ has appealed this decision.

Other Exchanges. In the Powder River Coal Region, work continued on three coal exchange applications that were filed during FY 1988. In October 1989 the Department decided to discontinue processing a proposal by Meadowlark Inc. to exchange its patented Kerwin mining claims (an inholding in the Shoshoni National Forest of Wyoming) and relinquish a 320-acre portion of a lease near Gillette, Wyoming, for title to 1,400 acres of Federal coal lands covered by leases currently held by Meadowlark which are part of the Belle Ayr mine. The decision was based on an opinion by Departmental attorneys that the proposed exchange would not achieve the goal of the U.S. Forest Service to remove private lands from the Shoshoni National Forest, since the lands received in exchange would again be open to the location of mining claims and potential patenting.

At the end of FY 1989, Departmental attorneys were examining title evidence submitted by Texaco Inc. to exchange 1,975 acres of fee coal near Lake DeSmet, Johnson County, Wyoming, for yet-to-be-selected Federal coal. Texaco's offered fee coal has been declared to be an alluvial valley floor by the Wyoming Department of Environmental Quality and is precluded from surface mining.

Also at the end of FY 1989 the Department was preparing a draft environmental impact statement (EIS) on a proposal by Meridian Minerals Company to exchange some of its private lands in Montana with recreational, wildlife, and watershed values for a 3,674-acre parcel of Federal coal in the Bull Mountains in Musselshell and Yellowstone Counties, Montana. The Department released a

draft EIS for public review and comment in October 1989. In addition, the Department conducted appraisals of the offered and tentatively selected lands in FY 1989.

SECTION 2(a)(2)(A) OF MLA

Section 2(a)(2)(A) of MLA provides that no Federal lease may be issued under the MLA to any entity that holds, and has held for 10 years, a Federal coal lease that is not producing in commercial quantities. The deadline for compliance was December 31, 1986. The BLM is required to ensure compliance for all subsequent onshore leasing actions pursuant to the MLA. The BLM monitors lessee compliance with Section 2(a)(2)(A) on a monthly basis, or more frequent if necessary, as a cross-check against self-certification statements that are submitted to BLM as part of lessee qualification.

In FY 1989, a bill (S. 1120) addressing Federal coal management issues was still under consideration in Congress. If enacted, the bill would have amended Section 2(a)(2)(A), among other FCLAA provisions, including diligence. The bill would have limited the Section 2(a)(2)(A) lessee-qualification provision to Federal coal leases that had not been mined out. The bill generally would have required lessees wishing to hold Federal coal leases for more than 10 years to pay a holding fee on noncompliance Federal coal leases. The DOI has supported the addition of an optional holding fee that current lessees may elect to pay on noncompliance Federal coal leases existing on or after December 31, 1986. The holding fee would be a provision of all new and readjusted

leases. The DOI has recommended against the two different concepts of escalating payments in lieu of production for diligent development in years 11 through 20. Another bill (S. 2325) was introduced in Congress in FY 1988. However, neither bill was reported out of subcommittee.

At the end of FY 1989, there were 75 lessees-of-record, with affiliates, holding 79 noncompliance coal leases.

REVISIONS TO FEDERAL COAL MANAGEMENT RULES (43 CFR GROUP 3400)

The BLM is continuing to draft proposed revisions to the Federal Coal Management Rules (43 CFR Group 3400), as stated earlier.

Revisions pertaining primarily to operations issues are anticipated. Current BLM regulations on exploration operations will also be re-examined.

UNDERGROUND COAL ROYALTY RATE

On July 29, 1988, the Bureau of Land Management published a notice of proposed rulemaking which invited public comments on a proposed revision to regulations at 43 CFR 3473. The notice requested comments on the application of a fixed rate between 5 and 8 percent for Federal coal mined using underground methods. This proposal would eliminate the need to evaluate leases to determine if conditions warrant a royalty rate between 5 and 8 percent. After review of the comments received, a final

rulemaking was published January 26, 1990 (55 FR 2653), which established a fixed royalty rate of 8 percent for Federal underground coal. This regulatory change provides for a single uniform underground royalty rate, and recognizes that relief provided for under section 39 of the MLA is the appropriate remedy for certain adverse lease-specific conditions affecting recovery of Federal coal reserves.

Hardship conditions facing individual lessees which affect the recovery of Federal coal reserves will be addressed under section 39. While the intent of the decision to set the underground royalty rate at 8 percent is to ensure that the public interest is best served for extraction of resources in all affected States, lessees having adverse conditions that qualify for a royalty rate reduction may apply under section 39.

SECTION 7 OF MLA

By regulation, the conditions of diligent development and continued operation are satisfied by production in commercial quantities. Commercial quantities is defined in regulation as being 1 percent of the recoverable coal reserves. Also, by regulation, the "operations and reclamation plan" of Section 7(c) of MLA has been termed the "resource recovery and protection plan." This is because the title more accurately reflects the mandate of MLA which requires maximum economic recovery of the coal. Approval of a resource recovery and protection plan is an assurance that the proposed mining operations will satisfy the requirements of MLA for the life-of-the-mine. However, authorization to commence mining operations also

requires obtaining approvals from all necessary Federal, state, and local authorities.

Based on the number of Federal coal leases that have been issued, readjusted, or modified since enactment of FCLAA and that are not yet or are no longer producing, it is estimated that 18 Federal coal leases could terminate in calendar year (CY) 1990, 18 in CY 1991, 13 in CY 1992. This estimate is predicated on the assumption that these Federal coal leases will continue to remain in a nonproducing status until the 10 year diligent development period has expired.

PROGRAM REVIEWS

In FY 1990, BLM plans to continue to follow up on ICRs and AICRs conducted in FY 1989, in the areas of I&E/PV, royalty, bonding, and diligence through the technical procedures review process.

REGIONAL ROYALTY RATE REDUCTIONS

The BLM's Royalty Rate Reduction Guidelines for Solid Leasable Minerals, signed on June 26, 1987, have been revised to add a fifth category under which a lessee may file an application pursuant to section 39 of the Mineral Leasing Act. In addition to the categories of expanded recovery, extension of mine life, financial test-unsuccessful operations, financial test-hybrid of categories 1 or 2, and 3, the new "regional" (State- or area- wide) category addresses the bypass of Federal coal reserves due to a Federal royalty rate that exceeds the

royalty rates on non-Federal leases in a State or geographic area.

A Notice of Final Action, promulgating the fifth category, was published in the Federal Register on February 27, 1990 and became effective on March 29, 1990. Under the new category, a State or area could be nominated for consideration for qualification by petition from the State Governor, industry representatives, or groups of Federal lessees. A BLM State Director also could initiate a review of their State(s) or of one or more areas under their jurisdiction. North Dakota, Oklahoma, and Alabama will be reviewed at the outset, as a result of a BLM study of Federal and non-Federal royalty rates. Once a State or area is deemed to qualify, individual applications would need to be filed with the appropriate BLM State Office.

INDIAN LEASE MANAGEMENT

In FY 1990, major emphasis will continue on BLM's lease management responsibilities on Indian lands. Specifically, efforts will concentrate on inspection and enforcement and production verification, mining and reclamation plans, and diligence.

I&E/PV

New initiatives in the Bureau's I&E/PV program will include ensuring that production is independently established on a quarterly basis for coal leases on Federal and Indian lands.

The BLM works in the principal Federal Agency for the management of Federal land resources under the two programs - coal leasing and coal operations. In its role as coal lease and mining, BLM works closely with other Federal Agencies and State and local governments. Some responsibilities may be shared by other agencies and with private industry and environmental groups whose interests are affected by coal leasing and development.

It was on May 12, 1916, to govern and mining in the Territory of Alaska under the Alaskan Coal Leasing Act of October 20, 1914. Most of the regulations that governed operations were contained in the later laws. The first draft covering regulations governing coal mining on the public domain were prepared on April 12, 1920, by the Bureau of Mines, which had the responsibility for the regulation of Federal lease operations, and was sent to the U.S. Geological Survey in 1925 by Departmental Order No. 54.

APPENDICES

HISTORICAL PERSPECTIVE ON THE FEDERAL COAL MANAGEMENT PROGRAM

COAL STATISTICS

The Federal coal law was enacted in 1914. The law provided for the leasing of coal lands and setting of conditions pertaining to the process of leasing. It was the first law in which the Federal Government assumed responsibility for coal deposits, and a comprehensive law that defined the area in which the existence and workability of coal was known. Following enactment in the early 1970s over alleged abuses of the preference right leasing process, Congress enacted the FCLAA, which amended the preference right leasing process, subject to public energy goals. In 1978, the BLM issued regulations to describe a new coal lease leasing system designed to address the concerns which it was in part, led to the enactment of the FCLAA and to implement the purposes provisions of NEPA, PLPMA, and ENORA. The 1978 program, as revised in 1982 and 1984, is currently in effect.

The regulations issued in the 1970s-1980s were designed to govern coal mining in Alaska and under the Alaskan Coal Leasing Act of October 20, 1914. Most of the regulations that governed operations were contained in the later laws. The first draft covering regulations governing coal mining on the public domain were prepared on April 12, 1920, by the Bureau of Mines, which had the responsibility for the regulation of Federal lease operations, and was sent to the U.S. Geological Survey in 1925 by Departmental Order No. 54. The regulations issued in the 1970s-1980s were designed to govern coal mining in Alaska and under the Alaskan Coal Leasing Act of October 20, 1914. Most of the regulations that governed operations were contained in the later laws. The first draft covering regulations governing coal mining on the public domain were prepared on April 12, 1920, by the Bureau of Mines, which had the responsibility for the regulation of Federal lease operations, and was sent to the U.S. Geological Survey in 1925 by Departmental Order No. 54.

BUREAU OF LAND MANAGEMENT

MANAGEMENT - LEASING AND OPERATIONS

The BLM serves as the principal Federal Agency for the management of Federal coal reserves under its two programs - coal leasing and coal operations. In its roles as coal lessor and manager, BLM coordinates with other Federal Agencies and State and local governments, whose responsibilities may be affected by coal-related activities, and with representatives of industry and environmental groups, whose interests are affected by how coal is leased and developed.

The Federal coal leases management mandate dates back to 1920, when the MLA was enacted. The MLA established a dual leasing system: a non-competitive "preference right" process for lands on which prospecting was necessary to demonstrate the existence and workability of coal deposits, and a competitive leasing system for lands on which the existence and workability of coal was known. Following concerns in the early 1970s over alleged abuses of the preference right leasing process, Congress enacted the FCLAA, which abolished the preference right leasing process, subject to valid existing rights. In 1979, the BLM issued regulations implementing a new competitive leasing system designed to address the concerns which, at least in part, led to the enactment of the FCLAA and to incorporate the pertinent provisions of NEPA, FLPMA, and SMCRA. The 1979 program, as revised in 1982 and again in 1986, is currently in effect.

The first coal mining regulations were

issued on May 18, 1916, to govern coal mining in the Territory of Alaska under the Alaskan Coal Leasing Act of October 20, 1914. Most of the regulations that governed operations were contained in the lease form. The first draft operating regulations governing coal mining on the public domain were prepared on April 12, 1920, by the Bureau of Mines, which had the responsibility for supervision of Federal lease operations until delegated to the U.S. Geological Survey in 1925 by Departmental Order No. 54. The regulations approved by the Secretary on April 30, 1921, were patterned after the Alaskan regulations, but did not apply to coal mining in Alaska and mining on Indian lands. Expansion of these operating regulations occurred in 1937, 1944, and 1946.

Enactment of the FCLAA in 1976 significantly expanded operations responsibilities to include exploration and resource recovery and protection, Logical Mining Units (LMUs), and other associated operations issues, such as inspection and enforcement/production verification, royalty rates, readjustments, suspensions, assignments, relinquishments, modifications, diligence, and section 2(a)(2)(A) lessee qualifications. Regulatory implementation of the FCLAA changes occurred in 1979, with revisions in 1982 to reflect court decisions and experience in operating the Federal coal management program under the 1979 regulations. The BLM is responsible for the establishment of proper royalty rates and verification of all

production from Federal coal leases. The MMS uses this information to assess production royalties.

LEASING ACTIVITIES

The first major step in the leasing portion of the Federal Coal Management Program is land-use planning by the surface management agency. Decisions resulting from the land-use planning process identify resource uses, including lands acceptable for further consideration for coal leasing. These areas are identified after reviewing all lands in a planning area using the four coal screens that are integral to the planning process. These screens are listed below.

1. Areas are eliminated from coal leasing consideration if they do not have coal development potential.
2. Areas are eliminated if they contain coal but are judged unsuitable for surface coal mining, using the 20 coal unsuitability criteria and their exceptions and exemptions found at 43 CFR 3461.
3. Additional coal resources may be eliminated on multiple-use grounds if other resource values are determined to be superior to coal.
4. Surface owner consultation may also result in the elimination of split-estate lands minable by surface methods from further consideration for leasing in areas where a significant number of qualified surface owners have stated a preference against surface coal mining.

Application of the unsuitability and multiple-use screens contributes to the completion of the Federal Lands Review required by section 522(b) of the Surface Mining Control and Reclamation Act of

1977 (SMCRA).

Before any new rounds of regional activity planning may begin, BLM must have completed resource management plans (RMPs) for the areas for which coal leasing is being further considered. Existing management framework plans (MFPs) may be used to support lease-by-application sales. Information developed by BLM during the land-use planning process is provided to OSM for its use in determining that the Federal Lands Review has been completed.

Regional Coal Activity Planning

Regional coal activity planning (as defined in 43 CFR 3420) takes place on lands within a Federal coal production region which have been included in one or more completed land-use plans. As of the end of FY 1987, there were five Federal coal production regions, Fort Union, Green River-Hams Fork, Powder River Basin, San Juan River Basin, and Uinta-Southwestern Utah. The Fort Union, Green River-Hams Fork, and Uinta-Southwestern Utah Regions were decertified during FY 1988. The San Juan River Region was decertified in early FY 1989, and the Powder River Region was decertified in early FY 1990. The decertification of the Southern Appalachian Subregion and the Fort Union, Green River-Hams Fork, Uinta-Southwestern Utah, and San Juan River Regions reflects the current lack of industry interest in competitive Federal coal leasing and the current condition of the coal market. When interest in Federal coal leasing resumes, the decertified Federal coal production regions may be redesignated through notification in the Federal Register. See Figure A-3 for a map of Federal coal production regions.

The term "regional activity planning" involves a call for expressions of leasing interest, the establishment of leasing levels, and the delineation, ranking, selection, and scheduling of tracts for lease sale from the land identified in land-use plans as acceptable for further leasing consideration. The RCTs play a crucial role throughout the activity planning process by guiding the leasing studies and recommending regional leasing levels and lease sale schedules to the Secretary. A full discussion of the procedures involved in regional activity planning is found in the FY 1987 Federal Coal Management Report.

Lease Sales

The BLM leases coal through competitive sales using a fixed royalty-variable cash bonus bidding system. The BLM prepares the paperwork necessary to offer the tracts for lease sale, holds the lease sale using sealed bidding procedures, and evaluates the high bids received to determine whether they constitute fair market value for the lease tracts. Many of the 1986 coal leasing program modifications involved the fair market value determination. Changes now in place have revised the economic model by which BLM estimates tract values, the basis upon which minimum bids for coal lease sales may be set, and the bid screening procedures by which a BLM sale panel evaluates the bids for acceptance.

Leasing by Application

The coal leasing regulations at 43 CFR 3425 provide for an application process through which Federal coal lease sales may be held apart from the regional coal leasing process. There are two types of applications, those for Federal

coal located outside designated Federal coal production regions and those for emergency situations within designated Federal coal production regions. Emergency sales are held when the coal is needed within 3 years to maintain production at existing mines, to meet contractual obligations, or to prevent the bypass of Federal coal. No emergency restrictions are placed on lease applications outside Federal coal production regions; lease applications may be submitted for tracts that would support new mining operations as well as for tracts that would support continuation of existing operations.

The major leasing emphasis during the last several years has been on the lease-by-application process. This is a reflection of market conditions and the limited interest of potential coal lessees in new mine tracts.

Preference Right Lease Applications (PRLAs)

The MLA set up a permit-lease system for the disposition of some publicly owned minerals, including coal. Under this system an individual could apply for a prospecting permit to determine the existence and workability of coal deposits within the permit area. If BLM confirmed the discovery of coal in commercial quantities, then the prospector is entitled to a preference right for the lease.

The FCLAA eliminated preference right leasing for Federal coal but permitted the processing of those coal PRLAs existing at the time of its enactment. The Secretary has no discretion to refuse to issue a preference right lease if the applicant has discovered coal in commercial quantities. Nevertheless, the Secre-

tary (1) must comply with the National Environmental Policy Act of 1969, (2) develop appropriate environmental impact mitigation measures, and (3) consider the cost of those mitigation measures in determining commercial quantities.

The procedures by which the existing coal PRLAs are processed was the subject of negotiations between several environmental groups and the DOI for about 4-1/2 years. The negotiations led to an amended court order in a lawsuit called "NRDC v. Berklund," which describes in detail the processing procedures. The basic process is as follows:

- (1) The applicant submits a PRLA.
- (2) The BLM accepts the PRLA and requests that the applicant submit the geologic data obtained during the term of the prospecting permit in an "initial showing."
- (3) Applicant submits the initial showing.
- (4) The BLM uses the applicant's non-proprietary data in analyzing the initial showing in an environmental analysis, generally an environmental impact statement.
- (5) The environmental analysis may generate site-specific mitigating measures, which are included together with general lease terms in a proposed coal lease. The proposed lease is sent to the applicant in a request for final showing.
- (6) The applicant submits a final showing, giving economic data specific to the lease terms and demonstrating whether or not that the coal under application can be mined commercially.

(7) The BLM analyzes the applicant's final showing data and publishes a cost estimate document for public review and comment. The cost estimate document presents the BLM's estimate of the costs of complying with the site-specific (environmental) requirements of the lease. These costs, along with the costs of developing the mine and mining the deposit, are weighed against the value of the resource to determine whether the applicant has discovered commercial quantities of coal.

(8) Any public comments received on the cost estimate document are incorporated or addressed in the final document, the record of decision (ROD). The ROD is the authorized officer's determination on whether or not the applicant has discovered commercial quantities of coal. If the decision is affirmative, a preference right lease may be issued no earlier than 30 days after the decision is made. If it is negative, the PRLA is rejected.

Regional Evaluation Teams

Four Regional Evaluation Teams (RETs) were established with a "core" group consisting of a supervisor, mining engineer, geologist, and an economist, as a result of the Secretary's commitments to the Linowes Commission. The responsibility of the RETs is to provide economic evaluations estimating fair market value or other economic determination for: (1) value of mineral rights or properties for lease, sale, exchange or conveyance; (2) commercial quantities determinations for coal PRLAs; (3) royalty rate reduction applications; and (4) maximum economic recovery of minerals on lands to be offered for lease. Many of the services provided by the RETs are both leasing and operational in nature.

OPERATIONS ACTIVITIES

The BLM is responsible for ensuring that coal exploration and mining operations are conducted in accordance with the MLA, the Mineral Leasing Act for Acquired Lands of 1947, related statutes and the implementing regulations in 43 CFR Group 3400, and various Indian leasing laws implemented in Title 25, Chapter I, of the CFR. Coal operations program requirements of the mineral leasing laws, including resource recovery and diligence, were significantly revised by the FCLAA. The coal operations program is mandated entirely by law and regulation. These requirements include oversight by verification of coal production from multi-billion dollar mining operations that generated 186.8 million dollars in Federal royalties in FY 1989. The BLM is also responsible for coal operations on Indian tribal and allotted lands and oversight of intermingled Federal, Indian, and private coal ownership in the same operation. The operations program includes responsibility for lease readjustments; exploration and resource recovery and protection plan review; inspection and enforcement under the MLA requirements; production verification; diligent development and continued operation compliance monitoring; lessee-qualification review; LMU approval; bonding; suspensions; and all other actions occurring after issuance of a lease, license, or permit.

Solid Leasable Minerals System

The Solid Leasable Minerals System (SLMS), is a computerized data base that was developed to track all aspects of lease, license, and permit operations. All producing and nonproducing leases, licenses, and permits are continually mo-

nitored using SLMS data and statistics to ensure compliance with the "established requirements" (those requirements established under the authority and mandate of the MLA, including the MLA itself, the 43 CFR Group 3400 regulations, license or lease terms and conditions, approved exploration or mining plans, and any associated orders or notices) and to ensure timely readjustment of the leases.

During FY 1989, BLM continued the implementation of a nationwide quality control program for the current SLMS data base. The design of a microcomputer-based distributed database system, SLMS Phase II, which will replace the current SLMS in FY 1990, was completed. The new system will utilize a fourth-generation database management language to provide enhanced capabilities for data tracking and reporting. In addition, information not previously included in SLMS will be a part of the new system. Improved data manipulation and printed report capabilities will be featured in SLMS Phase II. Programming of SLMS Phase II was nearly complete at year end. Testing of the SLMS Phase II system and user training will be completed by mid-year FY 1990.

Inspection and Enforcement

The I&E/PV Policy and Guidelines set out requirements for: (1) certification of personnel inspecting coal mines; (2) mine-specific inspection and enforcement plans; (3) minimum inspection coverage by type of inspection; (4) inspection and enforcement documentation; and (5) SMATs to allow for exchange of expertise and to ensure uniform and consistent application of the guidelines. The BLM Field Offices monitor all operations for compliance with the es-

established requirements, i.e. laws, regulations, orders, notices, lease terms and conditions, special stipulations and approved mine or exploration plan requirements.

The policy and guidelines ensure: (1) resource protection, accurate production reporting, and accurate application of royalty rates; (2) proper oversight of exploration and mining operations; (3) compliance with established requirements; (4) proper protection of the environment; (5) maximum economic recovery; and (6) proper abandonment of operations. Preparation of I&E/PV manuals began in FY 1989. These documents will facilitate nationwide consistency in implementation.

At a minimum, quarterly inspections are required to be conducted on all producing leases on both Federal and Indian lands.

Production Verification

A primary goal of the DOI's lease management and royalty programs is to ensure the proper identification, assessment, and collection of royalties due on coal production from Federal and Indian lands. The BLM is responsible for independent assessment of coal production and ensuring identification of the proper royalty rate while MMS is responsible for assessment and collection of correct royalty amounts.

The production verification process comprises two essential elements: (1) check reported production against mine and other records using the company method to determine accuracy of production measurement; and (2) make an independent engineering determination using alternate methods to establish the re-

ported production. Discrepancies are reconciled in accordance with the irregularity and exception reporting procedures outlined in the BIA/BLM/MMS Memorandum of Understanding (MOU).

The significance of production verification will continue to increase as Federal coal royalty revenues increase from increased production, and Federal lease readjustments occur, raising the royalty rate from cents-per-ton to the statutory ad valorem rate. BLM is exploring the potential for computerizing production verification procedures and other methods of establishing production and obtaining data from the companies.

Full production verification is also required quarterly, at a minimum, pursuant to each inspection on both Federal and Indian lands.

Lease Suspension Guidelines

Guidelines for processing an application for suspension of a coal or other solid mineral lease were issued on June 15, 1987, addressing three types of suspensions: (1) suspension of operations and production in the interest of conservation under Section 39 of MLA; (2) suspension of operations where a lease cannot be operated except at a loss (only applicable to solid mineral leases or coal leases not yet subject to the FCLAA); and (3) suspension due to strikes, the elements, or casualties not attributable to the lessee (force majeure).

Readjustment of Lease Terms and Conditions

Under the MLA, as amended by FCLAA, coal leases are issued for a term of 20 years, subject to the requirement that BLM readjust a lease's terms

and conditions at the end of its primary term of 20 years, and at the end of each 10-year period thereafter, if the lease is extended. One of the provisions of FCLAA mandated readjustment of Federal coal leases, that were issued prior to FCLAA, to FCLAA terms and conditions upon the first lease readjustment anniversary date after FCLAA. The first coal lease readjustment after FCLAA subjects the lease to the FCLAA requirements of diligent development, continued operation, the payment of royalty at the rate of 12 1/2 percent for surface-mined coal and an annual rental at the rate of \$3.00 an acre. On January 26, 1990, regulations were promulgated establishing a fixed royalty rate of 8 percent for coal mined by underground methods and eliminating the provision for determination by the BLM authorized officer of a lesser royalty rate if conditions warrant. The BLM is readjusting all pre-FCLAA leases to the requirements of FCLAA and the regulations upon their first lease readjustment anniversary date after FCLAA. The U.S. Court of Appeals for the Tenth Circuit affirmed the BLM's interpretation of FCLAA that readjustment is required under law in its FMC Wyoming v. Hodel and Coastal States Energy Corporation v. Hodel decisions (see Chapter III A.3., above). The lease terms and conditions of 29 Federal coal leases were readjusted during FY 1989.

A significant portion of the 10.3 percent increase in reported royalties for FY 1989 is directly attributable to the increased production royalty rates required for coal leases at the time of readjustment. The royalty impacts of this high priority activity will continue to increase in proportion with the number of Federal coal leases readjusted.

Exploration Plans

The BLM receives and approves exploration plans for unleased and leased Federal coal. Exploration operations must comply with all of the "established requirements". Exploration plans may be modified as exploration proceeds. These exploration operations are monitored for compliance with the established requirements.

Resource Recovery and Protection Plans

The FCLAA established the requirements that lessees submit a resource recovery and protection plan (R2P2) within 3 years of the time the lease becomes subject to FCLAA. This requirement is codified at Section 7(c) of the MLA. The BLM receives all R2P2s and certifies whether the plan meets the statutory submittal requirement. When an R2P2 is submitted as a part of a SMCRA permit application package for approval it is called an MLA mining plan.

MLA Mining Plans

An MLA mining plan is a plan submitted as part of a SMCRA permit application package which shows that the proposed operation meets all of the established requirements for development, production, resource recovery and protection, diligence, and maximum economic recovery for the life-of-the-mine. The MLA mining plan is approved by the Assistant Secretary, Land and Minerals Management, based on the recommendation of BLM. The SMCRA permit must be consistent with the MLA mining plan. MLA mining plans may be modified as mining proceeds. The reclamation aspects under SMCRA are the

responsibility of OSM, or the State Regulatory Authority (SRA) if there is an approved State program and cooperative agreement.

MLA Diligence

The diligence requirements of Section 7 of MLA provide that all leases subject to FCLAA must achieve diligent development. Once diligent development has been met, the leases are required to maintain continued operation or pay advance royalty. Diligent development and continued operation are defined by regulation to be the production of coal in commercial quantities within specified time frames. Diligent development requires production of commercial quantities of the recoverable coal reserves by the end of the tenth year after the lease becomes subject to FCLAA. Continued operation requires a continuing obligation to produce commercial quantities of the recoverable coal reserves annually or to pay advance royalty based on the commercial quantities of recoverable coal reserves in lieu of production. The 43 CFR Group 3400 regulations currently set the commercial quantities amount to be 1 percent of the recoverable coal reserves. The BLM determines the recoverable coal reserves figure upon which this commercial quantities amount is set. Leases not yet subject to FCLAA diligence provisions are governed by minimum production or minimum royalty requirements of the individual lease.

The ultimate action required for failure to meet diligent development is lease termination and for failure to maintain continued operation, lease cancellation. The planned implementation of SLMS Phase II in FY 1990 will enable automated tracking of these diligence requirements. In FY 1990, BLM will pro-

pose possible regulatory changes to the diligence requirements in the regulations at 43 CFR Subpart 3483.

Logical Mining Units (LMUs)

Section 2(d) of MLA authorizes the establishment of LMUs. An LMU is a diligence mechanism which allows production crediting across coal lease boundaries to meet both MLA diligence requirements and lessee-qualification criteria for all Federal coal leases contained in an approved, producing LMU.

The formation of an LMU is a discretionary action made at the request of a lessee, based on lease-specific production and economic factors. By statute and regulation, an LMU is an area of land in which the coal can be developed in an efficient, economic and orderly manner as a unit. An LMU may consist of one or more Federal leases and may include non-Federal lands; however, all lands must be under the control of a single operator, be developed and operated as a single operation, be contiguous, and not exceed a total of 25,000 acres.

The BLM receives and approves all LMU applications. With the 1982 regulatory changes, lessees have been carefully weighing the advantages and disadvantages of having their Federal coal leases included in an LMU. Advantages include provisions to allow production occurring from anywhere within the LMU to be credited toward the diligent development or continued operation requirements of any Federal coal lease within the LMU. Additionally, inclusion of a nonproducing lease, which might subject a lessee to the Section 2(a)(2)(A) of MLA prohibition, in a producing LMU will allow the lessee to

continue participating in the MLA leasing program. One potential disadvantage of having a lease included in an LMU is the 40-year mine-out requirement of MLA for LMUs.

Royalty Rate Reduction

Under Section 39 of the MLA, the Secretary is authorized to reduce the royalty rate for coal below the minimum specified by statute or regulation for an entire leasehold or on any portion of the lease when it is necessary to encourage the greatest ultimate recovery, and in the interest of conservation of natural resources to promote development or when the lease cannot be successfully operated under the lease terms. A royalty rate reduction will have no effect on the payment of advance royalty which is paid in lieu of continued operation. The FCLAA specified a minimum royalty rate of 12 1/2 percent of the value of coal as defined by regulation, 43 CFR 3483.4, with an exception that the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The regulations as promulgated on January 26, 1990, established a fixed royalty rate of 8 percent for coal mined by underground methods.

In response to an August 1982 General Accounting Office (GAO) report, "Need for Guidance and Controls on Royalty Rate Reductions for Federal Coal Leases", GAO/EMD - 32-86, that was critical of certain procedures and contained GAO recommendations, BLM, after public comment, amended the regulations at 43 CFR 3485.2(c)(2) to establish the information that must be submitted by an applicant for a royalty rate reduction.

Subsequently, BLM published in the Federal Register, Draft Revision, Royalty Reduction Guidelines for Federal Coal, Phosphate, Potassium, Sodium, Sulphur and Tar Sand Leases, 50 FR 6062 (Feb. 13, 1985). Comments received from this notice and from a public meeting held on April 3, 1985, in Denver, Colorado, were incorporated in new guidelines reflecting present Department policy. The guidelines became effective June 26, 1987.

Specifically, an applicant for a rate reduction must meet two essential conditions to qualify under provisions of the statute, regulations and guidelines: (1) the rate reduction would encourage the greatest ultimate recovery; and (2) the rate reduction would be in the interest of conservation of natural resources. After qualifying under the above conditions, a rate reduction may be granted only whenever in the Secretary's judgment it is necessary to do so: (1) to promote development; or (2) whenever a lease cannot be successfully operated under the lease terms.

The categories and criteria in the guidelines for approval of rate reduction are:

1. Expanded Recovery: Where a lessee certifies that, without a royalty rate reduction, either (a) adverse geologic and engineering conditions make the solid leasable mineral resources identified in the application economically unrecoverable at the lease royalty rate using current standard industry operating practices, or (b) where the lease royalty rate, all geologic and engineering conditions being the same or similar, makes the solid leasable mineral resources identified in the application likely to be bypassed because they are less economically recoverable than resources on non-Federal leases that are part of the

near-term mining sequence within the same operation.

2. Extension of Mine Life: Near the end of mine life, where a reduced royalty rate would extend the period during which mining would occur and thereby enhance the greatest ultimate recovery of solid leasable mineral resources. The lessee must certify that adverse geologic and engineering conditions make these incremental resources economically unrecoverable, using current standard industry operating practices, without a royalty rate reduction.

3. Financial Test - Unsuccessful Operations: Where operations on a lease are not financially profitable under the terms of the lease, with lease operating costs exceeding lease production revenue. The BLM, with MMS assistance, would evaluate the financial justification of such applications based on the submission of detailed operating data as well as the geologic and engineering data required in categories 1 and 2.

4. Financial Test - Expanded Recovery/Extension of Mine Life: Where lessees qualifying under categories 1 or 2 above request a royalty rate reduction to a level below the specified rates set forth in these guidelines for those categories. A degree of profitability would be allowed as an incentive to produce these resources. The BLM, with MMS assistance, would confirm the financial basis of such applications based on the submission of detailed operating data as well as the geologic and engineering data required in categories 1 and 2.

Applications approved under categories 1 or 2 would receive a reduction in the royalty rate to 8 percent for

surface-mined coal and 5 percent for underground-mined coal. Financial data will be required for unsuccessful operations and for expanded recovery and mine life extension when the established rate reduction is deemed insufficient. A rate cannot be reduced below 2 percent. "Bonus royalty" bid is a component of fair market value required by FCLAA. There is no authority for reduction of "bonus royalty" as there is no authority to refund a "cash bonus." In no case may a royalty rate below the statutory minimum be prescribed as the initial or readjustment terms of any lease. The relief afforded must occur apart from establishment of the basic lease terms (93 IBLA 324-5).

Lessees who had applications pending for royalty rate reduction in July 1987 were required to amend their applications to comply with the new guidelines. Consultation with the State Governor is conducted for all royalty reduction actions, prior to a final decision.

MINERALS MANAGEMENT SERVICE

The MMS responsibilities in the Federal Coal Management Program focus upon the collection of royalties, rents and bonuses from Federal coal lessees.

Federal Coal Royalties Collection

The MMS is responsible for collecting the royalty payments for Federal coal leases. During FY 1989, 211.4 million tons of Federal coal were produced and 186.8 million dollars of Federal royalties were collected on coal production valued at slightly over 2.2 billion dollars (see Tables A-1 and A-2). This represents an increase of 13.0 percent in production and a 10.3 percent increase in royalty payments from FY 1988.

On public domain lands, with the exception of Alaska, 50 percent of the royalties is returned to the State treasuries, 40 percent is placed in the Federal Reclamation Fund that was established by the Reclamation Act of 1902, and 10 percent remains in the U.S. Treasury's miscellaneous receipts. Ninety percent of the royalties from Federal coal leases in Alaska is returned to the Alaska State Treasury.

The Federal royalties amounted to an average of 8.4 percent of the production value of the coal in FY 1989, compared to an average of 6.6 percent in FY 1988. The difference between this average percentage and the current regulatory minimum royalty requirements of 12.5 percent for surface-mined coal and 8 percent on underground-mined coal on new and readjusted leases results from prod-

uction taking place on leases issued before the conversion from a fixed cents-per-ton royalty to an ad valorem percentage royalty provision. The fixed cents-per-ton royalty lease-term provisions, which were frequently set at between 15.0 and 22.5 cents per ton, can only be increased at the time of readjustment of these lease terms.

Revision of Coal Product-Value Regulations

The process of amending the product-value regulations was initiated in response to recommendations contained in the January 1982 Linowes Commission Report. An advance Notice of Proposed Rulemaking was issued for public comment in January 1986. During this period, the Secretary established a Royalty Management Advisory Committee (RMAC), composed of representatives from States, Indian Tribes and allottees, and from the coal, and oil and gas industries, to advise him on royalty management issues, including appropriate changes to the DOI regulations regarding product value for royalty purposes. Proposed coal valuation regulations were published in the Federal Register on January 15, 1987 (52 FR 1840-1856). Seventy-one written comments on the coal valuation regulations proposed in January were received at DOI by April 15, 1987. On July 9, 1987, and August 12, 1987, DOI reopened the coal comment period for 14 days, and for 60 days, respectively. The 60-day formal comment period closed on October 13, 1987. The Senate Subcommittee on

Mineral Resources Development and Production held oversight hearings on the proposed rules on November 16, 1987. The final coal product valuation regulations were published in FY 1989

(Federal Register, January 13, 1989 (54 FR 1492-1532)). Royalties are based on the value of the coal as established through the product-value regulations.

PRODUCING LEASES, PRODUCTION, PRODUCTION VALUE AND ROYALTY PAYMENTS
BY STATE: FY 1989

State	Producing Leases		Production in FY 1989 (Thousand Tons)	Production Value (Thousand \$\$\$)	Royalty Value (Thousand \$\$\$)
	Number	Acreage			
Total	136	243,344	211,377	\$2,228,061	\$186,813
Alabama	1	120	79	3,024	225
Colorado	33	40,771	10,701	209,968	14,350
Kentucky	2	1,286	221	5,161	423
Montana	12	32,220	21,498	245,124	26,334
New Mexico	6	13,874	5,671	144,250	17,739
North Dakota	8	9,542	5,198	43,429	4,145
Oklahoma	2	2,228	65	1,983	110
Utah	39	41,503	15,535	271,894	19,539
Washington	1	241	691	13,954	197
Wyoming	32	101,559	151,718	1,289,274	103,751

Note: The statistics represent production and royalties reported during FY 1989 and adjustments made during FY 1989 for prior periods. The FY 1989 royalty management statistics may not represent actual production achieved in FY 1989 or the royalty accrued on that production due to adjustments for previous years. Estimated in part.

SOURCE: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.

Table A-1

PRODUCING LEASES, PRODUCTION, PRODUCTION VALUE AND ROYALTY PAYMENTS
BY REGION: FY 1989

Region	Producing Leases		Production in FY 1989 (Thousand Tons)	Production Value (Thousand \$\$\$)	Royalty Value (Thousand \$\$\$)
	Number	Acreage			
Total	136	243,344	211,377	\$2,228,061	\$186,813
Southern Appalachian	1	120	79	3,024	225
Fort Union	8	9,542	5,198	43,429	4,145
Green River- Hams Fork	35	60,632	15,042	292,042	21,471
Powder River	29	90,212	166,391	1,405,749	119,963
San Juan River	6	13,874	5,671	144,250	17,738
Uinta-SW Utah	51	64,247	17,960	317,144	22,472
Other	6	4,717	1,036	22,423	799

Note: The statistics represent production and royalties reported during FY 1989 and adjustments made during FY 1989 for prior periods. The FY 1989 royalty management statistics may not represent actual production achieved in FY 1989 or the royalty accrued on that production due to adjustments for previous years. Estimated in part.

SOURCE: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.

Table A-2

GEOLOGICAL SURVEY

The major coal-related activities of the GS during FY 1989 were those of the Coal Resources Investigations Program, National Coal Resources Data System (NCRDS), the Evolution of Sedimentary Basins Program, and the Coal Hydrology Program.

The Coal Resource Investigations Program consists of mapping, establishing local and regional coal-bed stratigraphic and correlation networks, and coal-quality and coal-resource characterization assessments done on regional as well as detailed, local levels. Data derived from these assessments and related studies are entered into the NCRDS, a computer-based resource data system. These data are available to support the Federal Coal Management Program.

The Evolution of Sedimentary Basins Program is designed to conduct basic research for an integrated approach to the prediction and assessment of energy resources in all major sedimentary basins including those containing Federal coal deposits.

The Coal Hydrology Program consists of hydrologic data collection, areal studies, and research activities associated with the availability of water to support increased coal development and the impacts of such development on the hydrology. A description of these FY 1989 activities is presented in this section.

1. Coal Resources Investigations: Regional Coal-Resource and Coal-Quality Characterization Activities- Regional coal-resource and coal-quality charac-

terization activities provide critical information on the quality, quantity, and availability of coal for development and include baseline geologic information needed to understand and reduce adverse environmental effects resulting from coal utilization. Coal-quantity and coal-quality characterization shows the distribution and continuity of the coal resources as well as the variations in heating value, impurities, moisture, ash content, and trace-element concentrations. Data derived from these studies are compiled into regional maps for areas of priority interest for Federal coal lease sales and scientific information needs.

In FY 1989, regional geologic studies and coal resource characterizations were underway in all major coal basins west of the 100th Meridian and in the Appalachian Province. In addition, 22 State geologic agencies were cooperatively supported by the GS for the appraisal of the coal deposits in their States.

In support of the Federal Coal Management Program in FY 1989, work was conducted on coal-resource and coal-quality assessments in cooperation with Alabama, Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming. Fifty-five regional maps of priority areas in the Western Federal-coal regions, including information on coal geology and engineering and hazards studies, have been completed to the stage where they can be used in coal management decisions.

Topical Reports - About 140 topical re-

ports and maps on research activities that are supportive of the work of the Federal Coal Management Program have been prepared and published by the GS during FY 1989.

2. National Coal Resources Data System - In FY 1989, new-data entry of approximately 14,000 point location descriptions with over 156,000 detailed stratigraphic records and 600 chemical-analysis records was accomplished. The largest contribution came from cooperative programs with 22 State geologic agencies. Currently, the NCRDS contains approximately 1.6 million stratigraphic units and chemical data on more than 100,000 coal samples. Several State agencies completed coal resource assessment studies for selected areas through remote access to the NCRDS data base and software. An inventory of existing data was completed and software was acquired to improve the ability of the system to provide geologic and geo-statistic models of the quality, quantity, and framework of coal deposits.

A major new direction in assessing coal resources was begun in FY 1987. A pilot study to develop methodology to assess the availability of coal resources for development was carried out in eastern Kentucky in cooperation with the Kentucky Geological Survey. This pilot study was successful and the GS extended the methodology in cooperation with Kentucky, Virginia and West Virginia. As of the end of FY 1989, eight additional 7 1/2-minute quadrangle areas in these three States have been studied. Results to date show that only about 53 percent of the original coal resources in the nine study areas is currently available for development; when recoverability factors are taken into consideration, the actual coal that can be

recovered may only be about 30 percent. This work will be continued in FY 1990 in three new study areas, one each in Kentucky, Virginia, and West Virginia. Note: These studies include Non-Federal and Federal coal resources.

3. Evolution of Sedimentary Basins Program

The Evolution of Sedimentary Basins Program was implemented during FY 1985 in six major basins -- Central Appalachian, Anadarko, Powder River, Uinta/Piceance, San Juan, and North Slope of Alaska; the Illinois, Great, and Paradox Basins will be added in FY 1990. Physical stratigraphic, biostratigraphic, sedimentologic, and paleoecological studies are providing an analysis of the geologic history of these basins, including the formation and preservation of coal deposits. This program is providing important regional information which will improve energy-resources characterization on Federal lands.

4. Coal Hydrology Program

Water Resource Activities - The objective of the Survey's coal-hydrology effort is to assess hydrologic conditions and water-supply problems related to coal mining and land reclamation, as needs are identified jointly with State and local governments. Included are areal hydrologic investigations of surface and ground water, small watershed investigations, and water-quality studies in mined and reclaimed areas. In FY 1989, such activities were underway in 28 States. This work provides water-resources information essential to the preparation and review of applications for mining permits and reclamation plans by the coal industry. Water data collected by the GS and other Federal, State, and

local agencies were indexed by the National Water Data Exchange (NAWDEX) managed by the GS Water Resources Division. Earlier indexed data have been used to produce a five volume "Index to Water Data Activities in Coal Provinces of the United States." These printed indexes are available free and contain information about surface-water quantity and quality, ground-water quality, and areal inves-

tigations and other data-collection activities. The GS has also completed a special series of reports describing the hydrology of the principal coal areas of the Nation. The series comprises 57 reports that present information on ground water, surface water, and water quality in the areas covered. Information about availability of the reports may be obtained from National Water Data Exchange System.

OFFICE OF SURFACE MINING

The primary objective of the OSM is to protect society and the environment from the adverse effects of surface coal mining operations and to do so under conditions consistent with the Nation's need for energy. OSM's principal roles relative to Federal lands are to: (1) define policy and promulgate rules establishing performance standards and program administration processes; (2) review and process permit applications and mining plans, including such activities as are necessary for NEPA compliance, and recommend action on mining plans to the Secretary; (3) in States with approved State regulatory programs under Section 503 of SMCRA, negotiate State-Federal cooperative agreements for State regulation on Federal lands according to Section 523(c) of SMCRA; (4) in the absence of a State-Federal cooperative agreement, carry out the permitting, inspection and enforcement, and other functions of the regulatory authority as set forth in SMCRA; (5) provide oversight of State administration of the regulatory requirements under the terms of an approved State-Federal cooperative agreement; and (6) administer a program to designate Federal lands unsuitable for surface coal mining under the petition process specified in Sections 522(a) and (c) of SMCRA.

1. Petitions to Designate Areas Un- suitable for Surface Coal Mining

There were no petitions filed to designate areas unsuitable for surface coal mining on Federal lands in FY 1989.

2. State-Federal Cooperative Agreements

As of the end of FY 1989, the Secretary had entered into permanent program cooperative agreements with the States of Alabama, Colorado, Illinois, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming to manage surface coal mining on Federal lands in accordance with OSM requirements.

3. Permit Application/Mining Plan Re- view

At the beginning of FY 1989, OSM had 29 permit applications pending review for which approval of a mining plan, or approval of a modification to an approved mining plan is required. During the year, 31 more were received and 14 mining plans or modifications were approved.

FISH AND WILDLIFE SERVICE

The Fish and Wildlife Service (FWS) strives to ensure that fish and wildlife resources, including endangered species, receive full and equal consideration during the activities associated with the development of Federal coal resources. The FWS gathers and analyzes data related to fish and wildlife resources and development plans to identify areas of natural resources conflict. The FWS also provides assistance in the development of alternatives that avoid and/or minimize losses to fish and wildlife resources, as well as provide opportunities for enhancement of these resources.

Most of the FWS involvement in the Federal Coal Management Program consists of providing technical assistance to BLM during the planning phase of Federal coal leasing and mining operations and to the OSM during reclamation, as well as during the restoration of Abandoned Mine Lands.

The FWS conducts operational as well as research and development efforts on fish and wildlife impacted by coal development. Operational activities are implemented by its Fish and Wildlife Enhancement field offices located in the Regions. Data support is provided by the Office of Migratory Bird Management and the National Wetlands Inventory.

Research and development activities are conducted by various divisions of the FWS (e.g., Division of Wildlife and Fish Research, and Division of Technical Development). Research and development support is furnished by the National Ecology Research Center in Fort Col-

lins, Colorado, and other elements of the FWS research program.

The major role of the FWS in the Federal Coal Program has been providing technical review and recommendations for various aspects of the program. These responsibilities range from reviewing mine permits and plans and monitoring State programs for fish and wildlife protection to on-site field surveys to solve problems and reduce impacts to fish and wildlife resources by mining operations. Impacts can come from many diverse actions such as electrocution of raptors on transmission lines to mines, habitat destruction by mining operations, and disturbance to nesting raptors and/or other migratory birds.

Region 2

The Southwest Region reviewed six Federal mine plans, four State management plans and regulations, and 28 abandoned mine land projects. Twenty-five informal Section 7 consultations were conducted for threatened and endangered species. Field-level technical assistance was provided routinely to regulatory authorities and the coal industry on recommended fish and wildlife studies, Best Technology Currently Available (BTCA) practices for fish and wildlife protection, and regulatory compliance procedures.

Region 3

The Midwest Region reviewed 24 permit applications and 22 permit revisions. Six proposals for changes in regulations

were reviewed and recommendations made to protect fish and wildlife resources. In addition, 48 requests for informal Section 7 consultations for threatened and endangered species were reviewed.

Region 4

The Southeast Region has spent considerable time giving recommendations to the Office of Surface Mining relating to surface mining in high quality wetlands in the western coal fields of Kentucky.

Region 6

The Rocky Mountain and Northern Plains Region conducted reviews for 14 mine plan reviews and six permit renewals and Environmental Impact Statements for one mine and one lease. Ten informal consultations for Section 7 threatened and endangered species were also processed. In addition, recommendations were provided for two lease exchanges, six instances of conflicts with migratory birds, and two cases of raptor electrocution on power transmission lines. Comments were provided on nine amendments in State program regulations.

**DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

The FS has land management planning responsibilities for lands under its jurisdiction. In addition, the Secretary of Agriculture must consent to the lease terms before a lease can be issued, and must consent to the approval of mining and reclamation plans which include Federal coal leases on National Forest System (NFS) lands.

The FS effort in FY 1989 included land and resource management planning, responding to requests to review lease-by-applications, modifications, readjustments, relinquishments, exploration plans, mine plans, and abandoned mine land reclamation projects.

1. Land and Resource Management Planning - Forest Plans have been completed for those National Forests expected to contain Federal coal except for the Bridger-Teton which is expected to be completed during calendar year 1990. The other Forests which have a reasonable potential of containing Federal coal have approved land and resource management plans. They are: (1) National Forests in Alabama; (2) Allegheny in Pennsylvania; (3) Cherokee in Tennessee; (4) Custer in Montana; (5) Daniel Boone in Kentucky; (6) Manti-LaSal and (7) Fishlake and (8) Dixie in Utah; (9) George Washington and (10) Jefferson in Virginia; (11) Medicine Bow in Wyoming; (12) Monongahela in West Virginia; (13) Shawnee in Illinois; (14) Wayne in Ohio; and (15) White River and (16) San Juan and (17) Grand Mesa-Uncompahgre and (18) Gunnison in Colorado. The Forest Plans include a report on the application of the unsuit-

ability criteria (43 CFR 3461).

2. Lease by Application - Lease applications responded to:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Daniel Boone	Pending	1
Manti-LaSal	Pending	1
Fishlake/ Manti-LaSal	Completed	1
Manti-LaSal	Completed	1

3. Modifications - Lease modifications responded to:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Manti-LaSal	Pending	1

4. Readjustments - Lease readjustments responded to:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Medicine Bow	Completed	1
Manti-LaSal	Completed	3
Manti-LaSal	Pending	5
Fishlake	Pending	1

5. Relinquishments - Lease relinquishments responded to:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Jefferson	Completed	1

6. Exploration Licenses - Exploration plans responded to:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Manti-LaSal	Completed	1
Medicine Bow	Completed	2
Medicine Bow	Pending	1

7. MLA Mining Plans - MLA mining plans responded to:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Fishlake	Completed	2
Manti-LaSal	Completed	8
Medicine Bow	Completed	6
Manti-LaSal	Pending	1

8. SMCRA Mining Permit Reviews - SMCRA mining proposals responded to:

<u>Location</u>	<u>Quantity</u>
Manti-LaSal	5
Bridger-Teton	1

DEPARTMENT OF JUSTICE

This section of the report complies with section 8B of the MLA, which requires the Attorney General to report to Congress on "competition in the coal and energy industries" in conjunction with the DOI report on the Federal Coal Management Program. One purpose is to provide the economic analysis that is a necessary foundation for the establishment of coal management policies that will promote competition and efficient development in the coal and energy industries. The report is to provide the basis for the analysis the DOJ employs in its review of Federal coal lease issuances, transfers (including assignments), and readjustments under section 15 of the FCLAA and consequent advice to the Secretary of the Interior on whether any such action would "create or maintain a situation inconsistent with the antitrust laws." The intention of the report is to serve the dual functions of advising Congress of the present state of competition in the coal industry and indicating the competitive principles the DOJ applies in reviewing Federal coal lease issuances, transfers, and readjustments.

The first DOJ report, submitted in May 1978, defined relevant product and geographic markets and set forth an analytical framework for assessing the state of competition in the coal industry. The report found that coal markets in the United States were workably competitive. The report also enunciated the DOJ's policy of regarding any prospective lease issuance to a lessee with a share of uncommitted, non-Federal reserves in the relevant market in excess of 15 percent as prima facie inconsistent

with the antitrust laws. The report gave special attention to the competitive effects of participation in the coal industry of firms that also compete in markets for petroleum or nuclear fuel. Conditions were set out under which such interfuel integration would pose a danger to competition. It was quite clear that these conditions were not met in the case of coal/petroleum integration; coal/nuclear fuel integration was found to pose a somewhat greater competitive danger. Accordingly, a more stringent lease review standard was applied to certain nuclear fuel companies under which a share of uncommitted, non-Federal reserves in the relevant market in excess of 10 percent is considered prima facie inconsistent with the antitrust laws.

In May 1979, the second DOJ report updated several aspects of the first report's analysis and analyzed competition in coking-coal markets. To the extent the available information permitted reaching any conclusions, coking-coal markets were found to be workably competitive.

The third DOJ report, in November 1980, analyzed the competitive effects of railroad participation in western coal markets. The report found that there were several conditions that had to be met before participation by railroads in the western coal industry could pose a competitive problem. With the exception of one railroad, it was found that those conditions were not met. In the case of the one exception, Burlington Northern, Inc., it was not clear whether the conditions were met. The DOJ con-

cluded that, for reviewing Federal coal leases, all railroads would be treated the same as coal companies, but leases to Burlington Northern, Inc. would be given special scrutiny.

In March 1982, the fourth DOJ report analyzed the competitive effects of participation of electric utilities in the coal industry, and found that there was a significant danger that electric utilities could circumvent rate regulation through integration into the coal industry. However, whether leasing to any particular utility posed a significant competitive danger depended on a host of regulatory issues unique to that utility. The conclusion stated that leases to electric utilities would be subjected to detailed case-by-case review.

The DOJ's fifth and sixth reports, submitted in December 1982 and April 1983, reconsidered two basic aspects of the first report's analysis. The fifth report focused on the delineation of relevant markets in which to assess the effects of Federal coal lease issuances. Applying the market-delineation principles embodied in the DOJ's Merger Guidelines, the report concluded that there are three relevant markets in the area of the country in which virtually all Federal coal leasing will occur. Leases in the Powder River Region will be analyzed in a market that consists solely of the Powder River Region. Leases in the Fort Union Region of Montana and the Dakotas will be analyzed in a Northern Plains Market that consists of a combination of the Fort Union Region, the Powder River Region, and all other coal in Montana and the Dakotas. Leasing in the Denver-Raton Mesa, Green River-Hams Fork, San Juan, and Uinta-Southwestern Utah Regions of Colorado, New Mexico, Utah, and southern

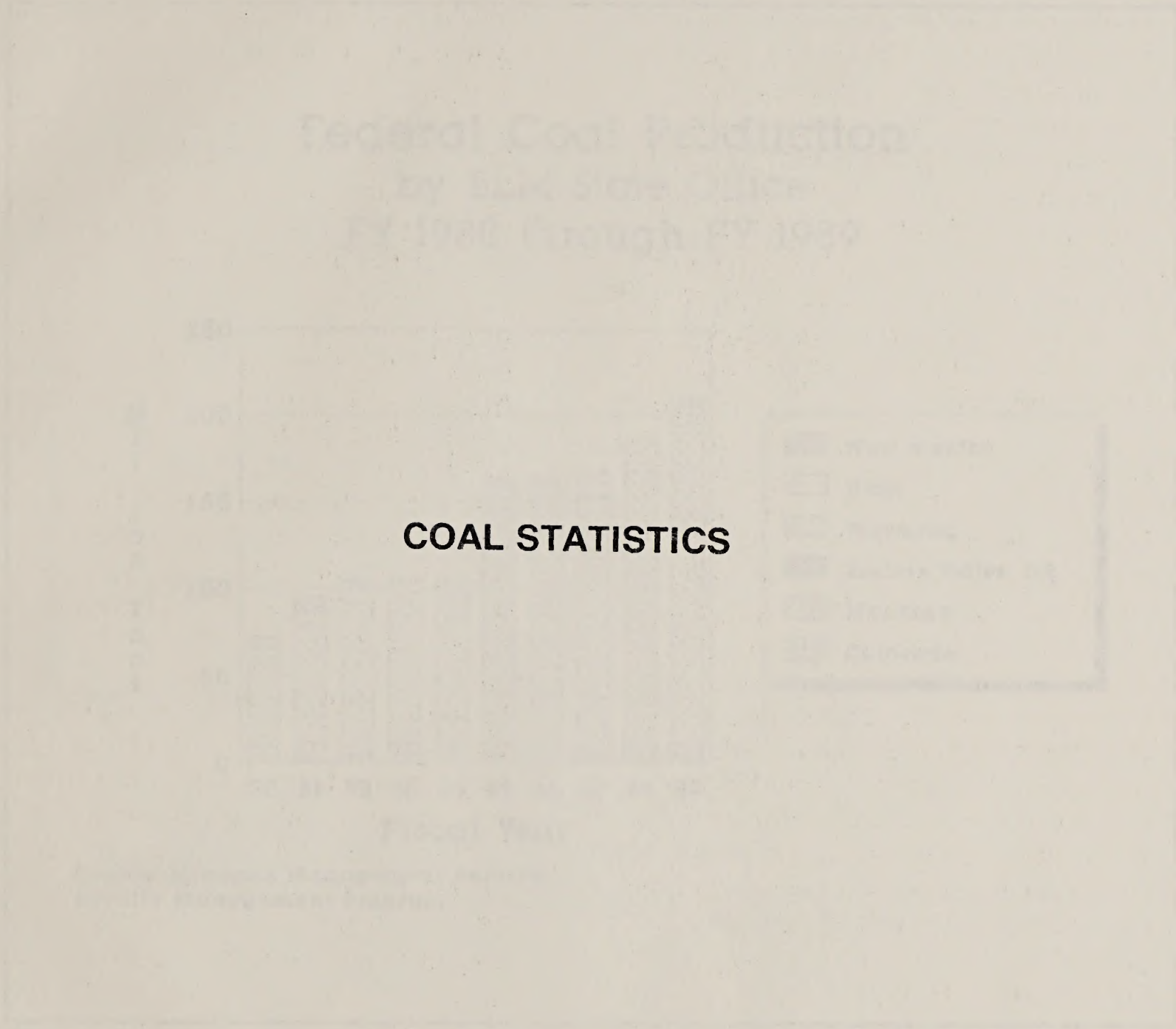
Wyoming will be analyzed in a Southwest Market that consists of the states of Arizona, Colorado, New Mexico, Utah, and the Green River-Hams Fork Region in Wyoming.

Also, the sixth DOJ report developed revised "universe" figures against which market shares in these three markets would be measured for the DOJ's lease reviews. The universe figures for uncommitted, non-Federal reserves are 56.1 billion tons in the Southwest Market, 42.7 billion tons in the Northern Plains Market, and 17.8 billion tons in the Powder River Market.

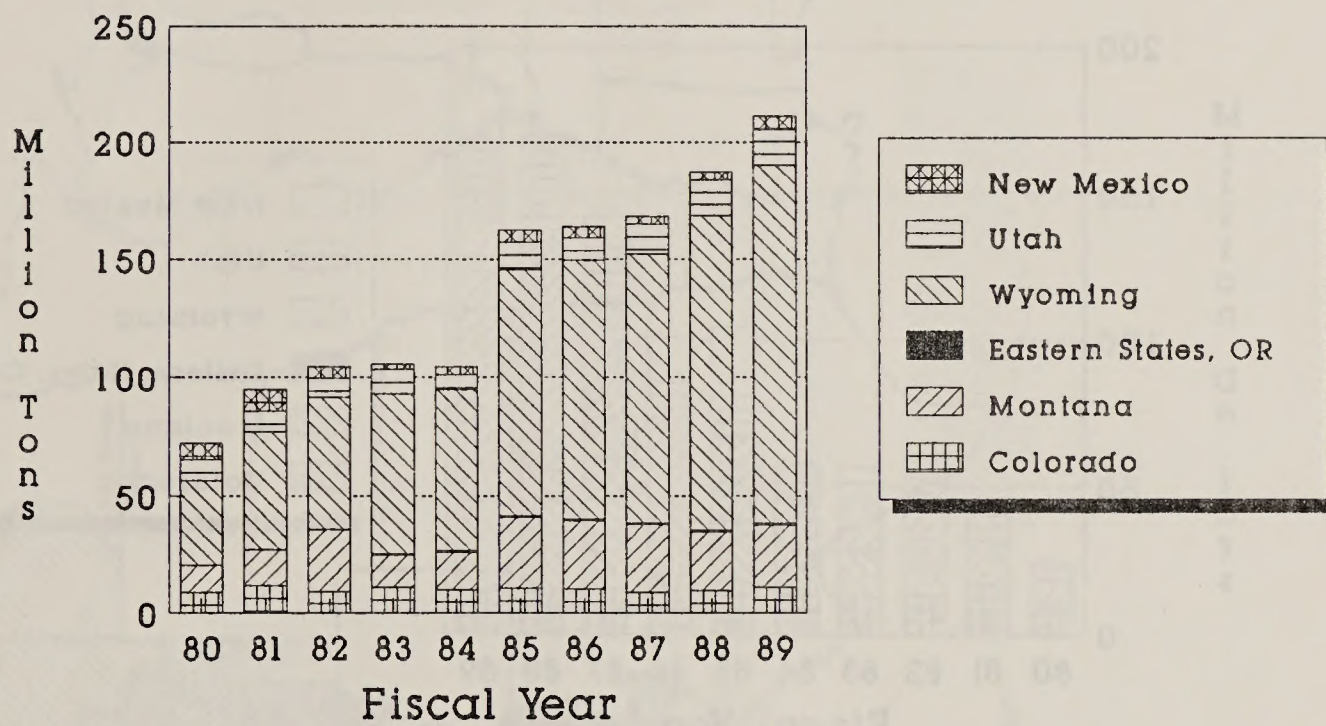
Together, these six reports comprise an analysis of competitive conditions in western coal markets and an explanation of the basic determinants of the DOJ's judgments in its statutory review of proposed Federal coal leases. During the past fiscal year, there have been no developments that materially alter the analysis or the conclusions contained in these reports.

Section 15 of the FCLAA also requires the DOI to consult the DOJ "at each stage in the formulation and promulgation of rules and regulations concerning coal leasing." DOJ did not advise the Secretary that any of the lease issuances, assignments, or readjustments reviewed during FY 1989 would create or maintain a situation inconsistent with the antitrust laws.

Federal Coal Production
 by State Office
 FY:1980 through FY:1999



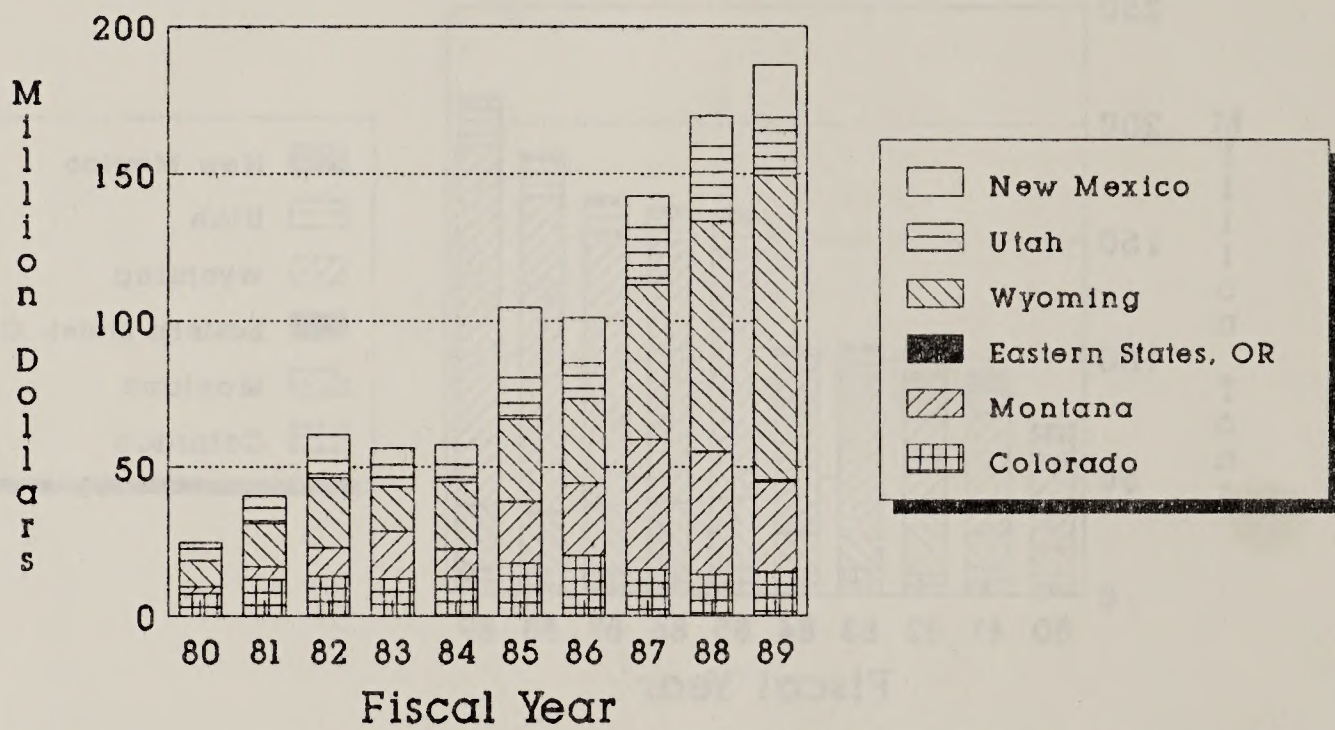
Federal Coal Production by BLM State Office FY 1980 through FY 1989



Source: Minerals Management Service,
Royalty Management Program

Figure A-1

Royalties from Federal Coal Leases by BLM State Office FY 1980 through FY 1989

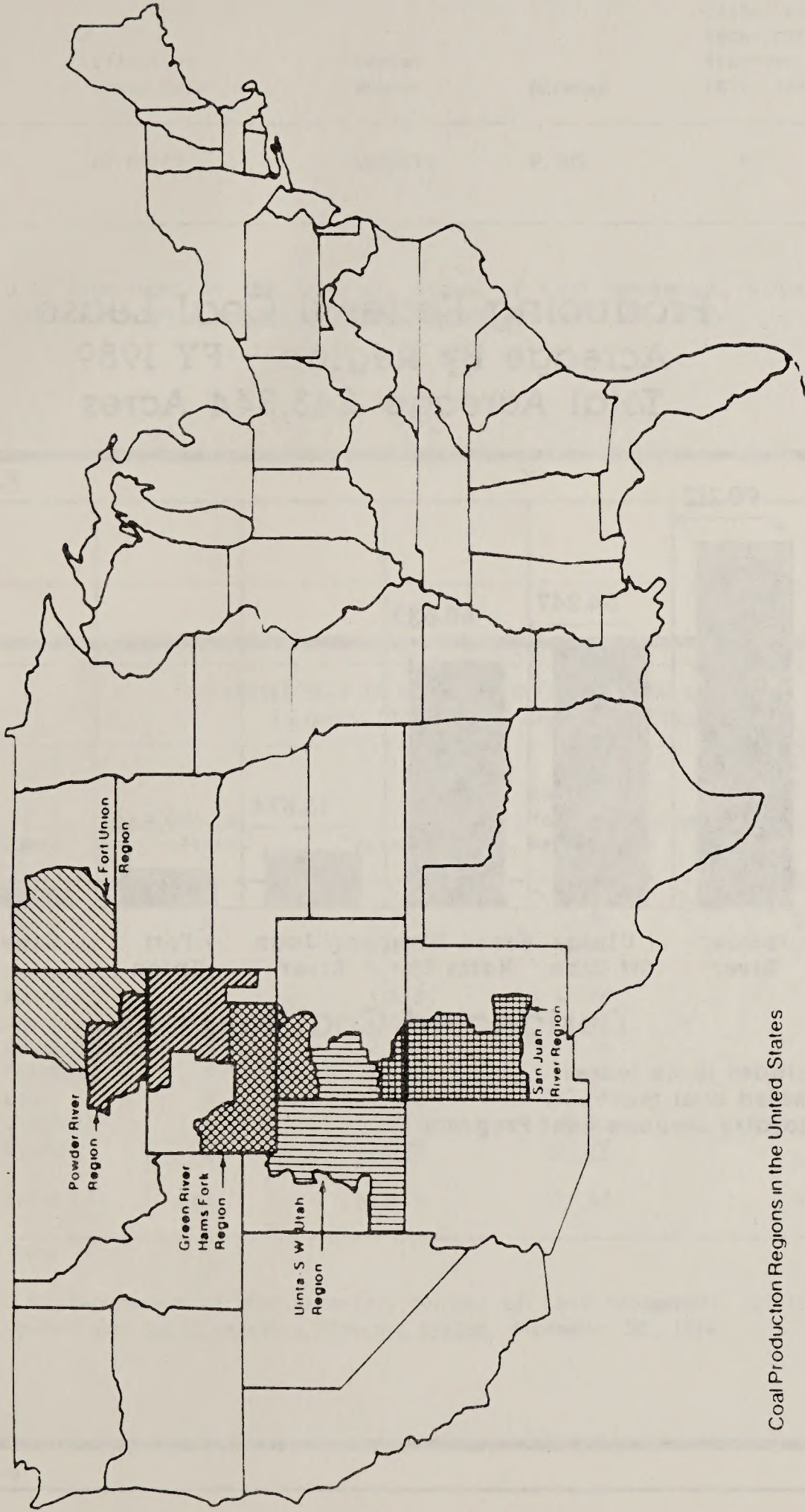


Source: Minerals Management Service,
Royalty Management Program

Figure A-2

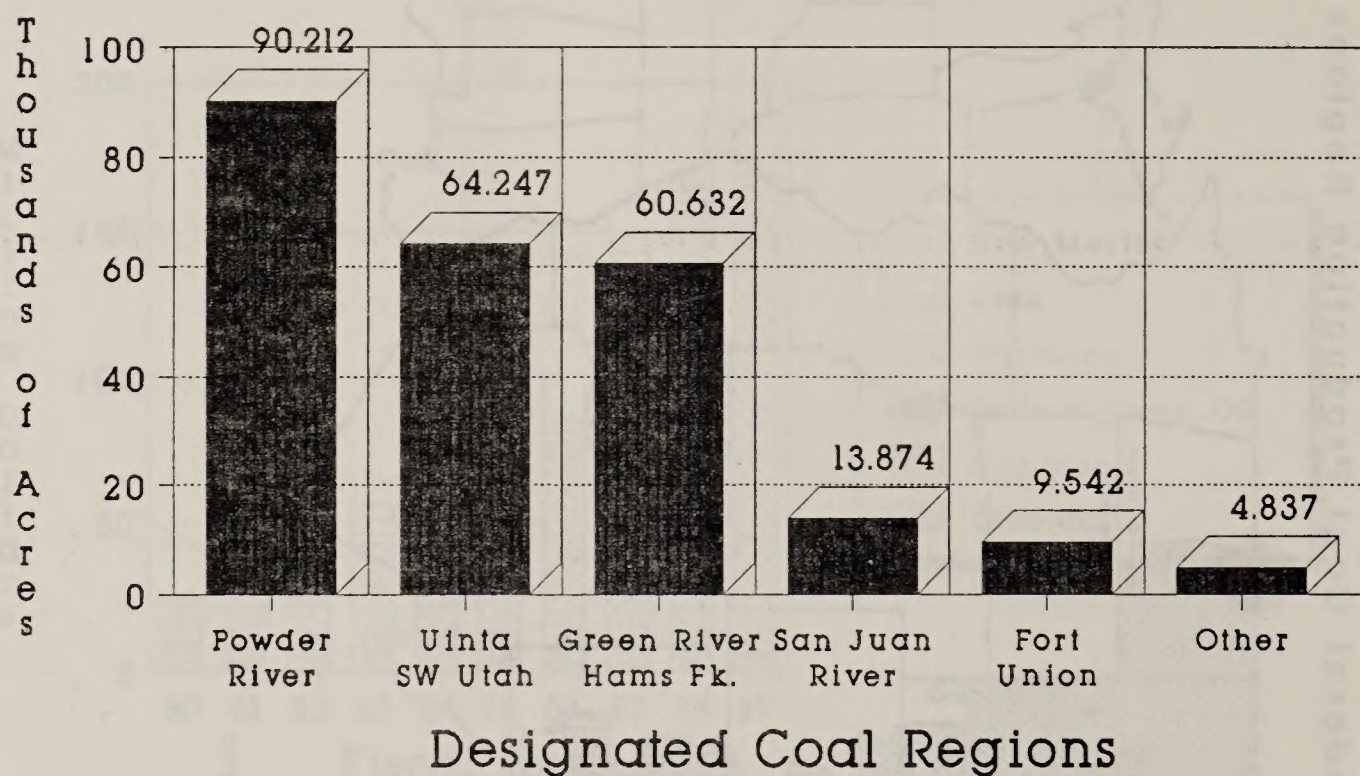
Figure A-3

Federal Coal Production Regions



Coal Production Regions in the United States

Producing Federal Coal Lease
Acreage By Region - FY 1989
Total Acreage: 243,344 Acres



Note: Other includes those leases not in a designated coal region.
Source: MMS, Royalty Management Program

Figure A-4

FEDERAL COAL LEASES ISSUED DURING FY 1989

Bonus State	Effective Lease Date	Serial Number	Acreage	Estimated Recoverable Reserves (Mil. Tons)	Royalty Rate (%)	Bid (\$/acre)
Utah	07/01/89	U-63214	9,905	84	8	\$1635

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals System, September 30, 1989.

Table A-3

LEASES SOLD IN ALL LEASE-BY-APPLICATION SALES
(January 1979 through September 1989)

State	No. of Tracts	Acres	Estimated Total Recoverable Reserves*	Total High Bonus Bids
Alabama	6	2,090	2.86	\$ 208,025.00
Colorado	15	6,706	50.36	1,226,042.20
Kentucky	6	5,146	12.41	493,030.00
Montana	5	1,538	47.86	135,700.00
New Mexico	2	4,016	76.28	118,592.00
North Dakota	6	2,688	27.46	129,500.00
Oklahoma	5	1,688	3.81	227,186.50
Utah	9	14,512	132.51	20,260,452.00
Virginia	1	251	0.30	27,610.00
Wyoming	7	12,710	157.77	3,283,588.00
Total all	61	51,345	511.62	\$26,110,225.70

*Million tons

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals System, September 30, 1989.

Table A-4

TABLE A-5

Largest 15 Federal Coal Lessees Ranked By Acreage: September 30, 1989

Lessee	Acreage	Number of Leases
AMCA Coal Leasing, Inc.	43,006	25
Utah Power & Light Co.	29,310	17
Swanton Energy Res. Inc.	27,659	16
Coastal States Energy Co.	23,035	10
5M Inc.	22,683	12
Whittington, H.M. et al	20,701	1
Nevada Electric Investment Co.	20,228	20
Chevron USA, Inc.	19,839	18
Kaiser Coal Corporation	19,497	1
Salt Creek Mining Co.	14,929	6
Black Butte Coal Co.	14,902	1
Western Minerals Inc.	14,770	5
Pacificorp	13,684	10
Evans Coal Co.	13,559	9
Western Energy Co.	13,011	8

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals System, September 30, 1989.

FEDERAL COAL LEASES ISSUED SINCE FISCAL YEAR 1978
BY FISCAL YEAR

	Number of Issued Leases	Total Acreage Of Issued Leases	Estimated Total Recoverable Reserves of Issued Leases (In Mil. Tons)
FY 1978	2	574	3.42
FY 1979	13	9,062	70.78
FY 1980	14	10,376	135.63
FY 1981	15	33,398	295.63
FY 1982	40	84,283	1,406.87
FY 1983	21	28,609	996.07
FY 1984	6	6,595	70.17
FY 1985	6	1,473	6.23
FY 1986	7	15,065	124.07
FY 1987	6	2,615	12.53
FY 1988	1	120	0.85
FY 1989	1	9,905	84.00
TOTAL	132	210,955	3,206.25

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Mineral System, September 30, 1989.

Table A-6

TABLE A-7
FEDERAL COAL LEASES SOLD SINCE FISCAL YEAR 1978
BY FISCAL YEAR

	Number of Leases Sold	Total Acreage Of Leases Sold	Estimated Total Recoverable Reserves Of Leases Sold (In Mil. Tons)	Total High Bonus Bids (In Dollars)
FY 1978	4	1,490	7.04	\$ 104,801
FY 1979	14	11,154	106.10	960,042
FY 1980	12	8,465	100.57	564,780
FY 1981	25	37,277	298.73	26,150,862
FY 1982	28	41,097	1,417.83	77,538,168
FY 1983	8	7,456	482.47	25,468,204
FY 1984	4	5,655	39.60	9,767,959
FY 1985	9	2,876	10.22	425,952
FY 1986	6	6,180	33.88	2,537,760
FY 1987	2	454	3.76	134,431
FY 1988	1	120	0.85	50,000
FY 1989	2	9,925	84.20	16,197,675
Total	115	132,149	2,585.25	159,900,634

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals, September 30, 1989.

TOTAL UNITED STATES COAL PRODUCTION AND FEDERAL PRODUCTION
BY STATE: FISCAL YEAR 1989

State	U.S. (Thousand Tons)	<u>FY 1989 Production</u> (Thousand Tons)	Federal
<u>TOTAL</u>	<u>968,741</u>		<u>211,377</u>
Alabama	26,369		79
Alaska	1,550		0
Arizona	12,726		0
Arkansas	111		0
Colorado	17,888		10,701
Illinois	61,005		0
Indiana	31,173		0
Iowa	395		0
Kansas	477		0
Kentucky	156,124		221
Louisiana	2,798		0
Maryland	3,363		0
Missouri	3,893		0
Montana	37,829		21,498
New Mexico	24,391		5,671
North Dakota	31,633		5,198
Ohio	33,038		0
Oklahoma	2,043		65
Pennsylvania	72,061		0
Tennessee	6,018		0
Texas	52,354		0
Utah	18,432		15,535
Virginia	48,000		0
Washington	4,873		691
West Virginia	153,400		0
Wyoming	166,797		151,718

SOURCE: Total U.S. Production - Department of Energy, Energy Information Administration.

Federal Production - Department of the Interior, Minerals Management Service, Royalty Management Program.

Table A-8

TABLE A-9

ROYALTY REVENUES FROM FEDERAL COAL LEASES,
BY STATE: FY 1981 TO FY 1989

State	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
Total	\$40,280,418	\$61,062,456	\$56,666,428	\$57,797,590	\$104,597,046	\$101,144,698	\$142,336,808	\$169,430,476	\$186,812,948
Alabama	0	3,686	175,600	58,633	0	0	0	0	225,194
Alaska	0	0	0	0	0	0	0	0	0
Colorado	11,952,875	13,170,861	12,270,325	13,121,474	17,331,963	20,032,273	15,031,721	13,674,183	14,350,476
Kentucky	0	0	0	0	0	0	0	280,607	423,107
Montana	3,922,771	8,782,544	13,681,669	7,533,527	14,625,338	17,853,566	38,986,165	36,636,360	26,334,026
New Mexico	3,440,772	7,841,138	5,000,506	6,623,975	23,884,620	15,402,285	10,325,319	10,134,177	17,738,670
North Dakota	101,677	745,253	2,106,051	1,477,787	6,344,295	6,669,614	5,365,814	4,709,133	4,144,898
Oklahoma	1,009,820	1,110,490	606,141	147,678	32,699	54,282	0	24,696	109,657
Utah	5,094,133	5,833,291	7,611,949	6,004,792	14,316,916	12,325,802	19,721,301	25,318,980	19,539,035
Virginia	0	0	0	41,110	90,271	0	0	0	0
Washington	0	13,115	46,149	139,948	79,729	130,826	117,287	94,177	196,989
Wyoming	14,758,370	23,562,078	15,168,038	22,648,666	27,891,215	28,676,050	52,789,201	78,558,163	103,750,896

NOTE: Details may not add to totals due to rounding. The statistics for FY 1989 represent production and royalty reported during FY 1989 and adjustments made during FY 1989 for prior periods. The FY 1989 royalty management statistics may not represent actual production achieved in FY 1989 for the royalty accrued on that production due to adjustments for prior years. These data are unpublished.

SOURCE: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.

TABLE A-10

PRODUCTION FROM FEDERAL COAL LEASES,
BY STATE: FY 1981 TO FY 1989
THOUSAND TONS

	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
Total	94,645	104,430	105,449	104,150	162,189	163,900	168,027	187,079	211,377
Alabama	0	2	105	33	0	0	0	0	79
Alaska	0	0	0	0	0	0	0	0	0
Colorado	11,452	9,157	10,795	9,927	10,380	10,121	8,765	9,236	10,701
Kentucky	0	0	0	0	0	0	0	136	221
Montana	15,402	25,195	11,574	14,520	24,031	22,433	22,864	20,525	21,498
New Mexico	8,873	4,847	2,290	3,048	5,145	4,825	3,225	3,077	5,671
North Dakota	200	1,190	2,253	1,311	6,271	6,853	6,057	4,846	5,198
Oklahoma	277	246	101	33	29	47	0	68	65
Utah	8,577	7,892	10,124	6,128	11,438	9,480	12,853	15,364	15,535
Virginia	0	0	0	14	32	0	0	0	0
Washington	0	66	231	700	326	654	554	420	691
Wyoming	49,864	55,835	67,976	68,436	104,537	109,487	113,709	133,407	151,718

NOTE: The statistics represent production and royalties reported during FY 1989 and adjustments made during FY 1989 for prior periods. The FY 1989 royalty management statistics may not represent actual production achieved in FY 1989 or the royalty accrued on that production due to adjustments for previous years. This data is unpublished.

SOURCE: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.

TABLE A-11
 FEDERAL COAL PRODUCTION, PRODUCTION VALUE,
 AND ROYALTY VALUE
 FY 1973 THROUGH FY 1989

Fiscal Year	Coal Production	Production Value	Royalty Value
	(Thousand Tons)	(Thousand \$\$\$)	(Thousand \$\$\$)
1973	14,033	\$65,548	\$2,199
1974	20,631	106,536	3,374
1975	26,897	168,727	4,857
1976	33,387	268,056	6,424
1977	50,355	433,600	9,853
1978	58,787	550,864	12,372
1979	59,141	699,234	16,119
1980	71,958	862,817	24,569
1981	94,645	1,198,764	40,280
1982	104,430	1,546,322	61,062
1983	105,449	1,550,462	56,667
1984	104,150	1,401,488	57,797
1985	162,189	2,374,138	104,597
1986	163,900	2,321,430	101,145
1987	168,027	2,616,056	142,337
1988	187,079	2,553,236	169,430
1989	211,377	2,228,061	186,813

SOURCE: U.S. Department of the Interior, Geological Survey, Federal and Indian Lands Coal, Phosphate, Potash, Sodium, and other Mineral Production, Royalty Income, and Related Statistics, June 1981, for data for FY 1973-1975. Data for succeeding Fiscal Years is unpublished and is from Mineral Management Service, Royalty Management Program. FY 1989 estimated in part.

TABLE A-12

READJUSTMENTS AND ASSIGNMENTS DURING FY 1987
AND PENDING ASSIGNMENTS
BY STATE: SEPTEMBER 30, 1989

State	No. of Leases Due for Readjustment in FY 1989	No. of Leases Readjusted in FY 1989	No. of Leases Readjusted and Pending Appeal at end of FY 1989*	No. of Leases Assigned in FY 1989	No. of Leases Pending Assignment at end of FY 1989
<u>TOTAL</u>	27	27	6	24	32
Alabama	0	0	0	3	0
Alaska	0	0	0	0	1
Colorado	5	5	1	8	21
Montana	0	0	0	0	1
New Mexico	3	3	0	0	0
North Dakota	0	0	0	2	0
Oklahoma	0	0	0	0	2
Utah	15	15	3	5	6
Wyoming	4	4	2	6	1

* Includes those leases with readjustments under appeal to the Interior Board of Land Appeals or in Court.

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operation, September 30, 1989.

TABLE A-13

RELINQUISHMENTS AND MODIFICATIONS DURING FY 1989
AND PENDING RELINQUISHMENTS AND MODIFICATIONS
BY STATE: SEPTEMBER 30, 1989

	No. of Leases Relinquished During FY 1989	No. of Leases Pending Relinquishment at end of FY 1989	No. of Leases Modified During FY 1989	No. of Leases Pending Modifications at end of FY 1989
<u>TOTAL</u>	20	19	2	1
Colorado	0	3	1	0
Kentucky	0	1	0	0
Montana	0	0	1	0
New Mexico	6	2	0	0
Utah	14	13	0	0
Wyoming	0	0	0	1

Source: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations,
September 30, 1989.

TABLE A-14

READJUSTMENTS ON FEDERAL COAL LEASES
FROM FY 1985 THROUGH FY 1989

State	No. of Leases Readjusted in FY 1985	No. of Leases Readjusted in FY 1986	No. of Leases Readjusted in FY 1987	No. of Leases Readjusted in FY 1988	No. of Leases Readjusted in FY 1989
<u>TOTAL</u>	39	49	60	46	27
Colorado	14	7	12	8	5
Montana	1	2	1	1	0
New Mexico	1	0	5	0	3
North Dakota	0	1	0	1	0
Oklahoma	1	1	2	3	0
Utah	14	36	33	18	15
Wyoming	5	2	7	15	4

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, September 30, 1989.

TABLE A-15

RELINQUISHMENTS ON FEDERAL COAL LEASES
FROM FY 1985 THROUGH FY 1989

State	No. of Lease Relinquishments in FY 1985	No. of Lease Relinquishments in FY 1986	No. of Lease Relinquishments in FY 1987	No. of Lease Relinquishments in FY 1988	No. of Lease Relinquishments in FY 1989
<u>TOTAL</u>	17	31	52	15	24
Alabama	1	0	0	0	0
Colorado	3	4	27	3	5
Kentucky	0	0	0	1	2
Montana	1	0	2	0	0
New Mexico	0	0	2	1	6
North Dakota	0	1	3	3	0
Oklahoma	5	3	1	2	0
Oregon	0	0	0	2	0
Utah	3	8	9	2	11
Virginia	0	0	0	1	0
Wyoming	5	14	8	0	0

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, September 30, 1989.

TABLE A-16

ASSIGNMENTS ON FEDERAL COAL LEASES
FROM FY 1985 THROUGH FY 1989

State	No. of Lease Assignments in FY 1985	No. of Lease Assignments in FY 1986	No. of Lease Assignments in FY 1987	No. of Lease Assignments in FY 1988	No. of Lease Assignments in FY 1989
<u>TOTAL</u>	41	50	48	5	24
Alabama	0	0	0	2	3
Colorado	7	6	8	1	8
Kentucky	1	0	0	1	0
Montana	0	1	1	0	0
New Mexico	6	4	0	0	0
North Dakota	0	0	0	0	2
Oklahoma	1	0	1	0	0
Utah	22	38	35	1	5
Wyoming	4	1	3	0	6

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, September 30, 1989.

TABLE OF ABBREVIATIONS

AVF	Alluvial Valley Floor
BTCA	Best Technology Currently Available
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
DOI	Department of the Interior
DOJ	Department of Justice
EIS	Environmental Impact Statement
FCLAA	Federal Coal Leasing Amendments Act
FSCAB	Federal-State Coal Advisory Board
FLPMA	Federal Land Policy and Management Act
FR	Federal Register
FS	Forest Service (USDA)
FWS	Fish and Wildlife Service
FOGRMA	Federal Oil and Gas Royalty Management Act
FY 1989	Fiscal Year 1989 (October 1, 1988 through September 30, 1989)
GAO	General Accounting Office
GS	U.S. Geological Survey
I&E/PV	Inspection & Enforcement/Production Verification
IBLA	Interior Board of Land Appeals
LMU	Logical Mining Unit
LUP	Land-Use Plan
MFP	Management Framework Plan
MLA	Mineral Leasing Act
MMS	Minerals Management Service
MOU	Memorandum of Understanding
NCRDS	National Coal Resources Data System
NEPA	National Environmental Policy Act
NF	National Forest
OSM	Office of Surface Mining Reclamation and Enforcement
OTA	Office of Technology Assessment
PRLA	Preference Right Lease Application
RCT	Regional Coal Team
RET	Regional Evaluation Team
RMAC	Royalty Management Advisory Committee
RMP	Resource Management Plan
R2P2	Resource Recovery and Protection Plan
SID	Secretarial Issue Document
SLMS	Solid Leasable Minerals System
SMAT	Solid Minerals Assistance Team
SMCRA	Surface Mining Control and Reclamation Act
SRA	State Regulatory Authority
USDA	United States Department of Agriculture

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